



# Reference Guide to Home Buying and Selling

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# Welcome

## The Resource Guide to Home Buying and Selling

Consider this booklet your introduction to the world of Real Estate. It's an exciting world that you entered the moment you decided to buy or sell a home. It's also a world that includes terms, forms and documents that you may not have encountered before.

That's why you have a real estate professional to guide you through the process and why we've put together the Resource Guide to help make your journey through the process even easier.

If you have specific questions about your transaction, feel free to contact your real estate agent.



We're building a rep as the industry's resource.



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# Home Buyer & Seller

## Frequently asked Questions

### **What is an escrow?**

When opening an escrow the Buyer and Seller of a piece of property establish terms and conditions for the transfer of ownership of that property. These terms and conditions are given to a third party known as the escrow holder. The escrow holder has the responsibility of seeing that the terms of the escrow are carried out. The escrow is an independent neutral account and the vehicle by which the mutual instructions of all parties to the transaction are complied with.

### **How does the escrow process work?**

The escrow is a depository for all monies, instructions, and documents necessary for the purchase of your home. These include your funds for down payment, your Lender's funds, and documents for the new loan. Generally, the Buyer deposits a down payment with the escrow holder, and the Seller deposits the deed and any other necessary papers with the escrow holder. Prior to close of escrow, the Buyer deposits the funds required and agreed upon by the parties to the sale with the escrow holder. The Buyer instructs the escrow holder to deliver monies to the Seller when the escrow holder:

- 1) Records the deed, and
- 2) Delivers to the Buyer a policy of title insurance which shows title to the property vested in the name of the Buyer.

The escrow holder is authorized to deliver the deed to the Buyer when the Buyer has deposited the agreed-upon purchase price and fulfilled any other conditions specified in the escrow instructions. The escrow holder handles the prorations and adjustments on any fire/hazard insurance, real estate taxes, rents, interest, etc., based on the escrow instructions of both parties.

The escrow holder thus acts for both parties and protects the interests of each within the authority of the escrow instructions. Escrow cannot be completed until the instructions have been satisfied and all parties have signed escrow documents. The escrow holder takes the instructions based on the terms of the Purchase Agreement and the Lender's requirements.

### **How do I open an escrow?**

The Buyer's Real Estate Agent will open the escrow for you, as soon as you execute your Purchase Agreement. Your agent will place your initial deposit into an escrow account. Escrow instructions define all the conditions that must occur before the transaction can be finalized. Your escrow instructions represent your written statement to the escrow holder, and they also provide title insurance protection for your home.

## How long is an escrow?

The length of an escrow is determined by the terms of the Purchase Agreement and can range from a few days to several months. An escrow averages 30 to 60 days.

## What is “close of escrow”?

An escrow closing is the culmination of the transaction. It signifies legal transfer of title from the Seller to the Buyer. Usually, the Grant Deed and Deed of Trust are recorded within one working day of the escrow holder’s receipt of loan funds. This completes the transaction and signifies the close of escrow. Once all the conditions of the escrow have been satisfied, the Escrow Officer informs you of the date escrow will close and takes care of the technical and financial details.

## What information will I have to provide?

**Statement of identity:** You will be asked to complete a statement of identity as part of the necessary paperwork. Due to the fact that many people have the same name; the statement of identity is used to identify the specific person in the transaction through such information as the date of birth, social security number, etc. This information is kept confidential.

## Information that the Buyer needs to provide

**Lender information:** Provide the escrow holder with the name, address, and phone number of your Lender as soon as possible after opening escrow.

**Hazard/fire insurance:** If you are purchasing a single family, detached home or a townhome, be sure to order your hazard/fire insurance once your loan has been approved. You should immediately begin looking for an agent; not all companies can write fire/hazard insurance. Then, call your escrow holder with the Insurance Agent’s name and phone number so that he/she can make sure the policy complies with your Lender’s requirements. You must have your insurance in place before the Lender will fund money to the title company. If you do not have an Insurance Agent, your Real Estate Agent can help you.

**Title to home:** Decide how you wish to hold title to your home. The escrow holder will need this information in order to prepare the Grant Deed. We suggest you consult an attorney, tax consultant, or other qualified professional before you decide. Check the chart in this booklet showing common ways of holding title/vesting to help you understand. Your Lender also needs this information to prepare loan documents.

**When do I sign loan documents?:** Generally, your escrow instructions will be mailed to you. Your Escrow Officer or Real Estate Agent will contact you to make an appointment for you to sign your final loan papers. At this time, the escrow holder will also tell you the amount of money you will need (in addition to your loan funds) to purchase your new home. Your loan funds will be sent directly to the Title or escrow holder by the Lender.

**Lender's requirements:** Make sure you are aware of your Lender's requirements and that you have satisfied those requirements before you come to the escrow company to sign your papers. Your Loan Officer or Real Estate Agent can assist you.

### **How does the loan process work?**

Your real estate agent can provide you with current financing information to help you in selecting a Lender. The Lender might be a bank, savings and loan, or a mortgage company. You will be required to complete a loan application which will require personal and financial information.

### **What happens after I submit the loan application?**

The Lender will begin the qualification process. This includes verification of the information submitted on the application and appraisal of the value of the property.

The Lender will require that you obtain hazard/fire insurance if you are purchasing a detached home. However, if you are buying a condominium or townhouse, there may already be a master hazard policy. Check with your Real Estate Agent. Also, check with your Insurance Agent for additional coverage for your personal property. The Lender will also require that you obtain title insurance and may have other requirements that will need your attention prior to the close of escrow. Your Real Estate Agent can help you take care of these requirements well in advance.

### **When the loan is approved, what's next?**

When your loan is approved and the loan documents are sent to the escrow holder handling your transaction, the escrow holder will prepare an estimated closing statement which specifies in debit and credit format the disposition of your purchase funds.

### **How will I know where my money has gone?**

Written evidence of your deposit is generally included in your copy of the Purchase Agreement (sometimes called an Agreement to Purchase and Receipt for Deposit). Then your funds will be deposited in a separate escrow or trust account and processed through a local bank.

### **What's the next step after I've signed the closing loan documents?**

After you have signed all the necessary instructions and documents, the escrow holder will return them to the Lender for a final review. The review usually occurs within a few days. After the review is completed, the Lender is ready to fund your loan and inform the escrow holder.



### **When will I receive the deed?**

The original deed to your home will be mailed directly to you at your new home by the county recorder's office or title company. This service takes several weeks and sometimes longer depending on the county recorder's volume.

### **What do I need to do before my appointment to sign loan documents?**

**Identification:** Please bring either your valid state identification card, driver's license, or passport with you to your appointment with the notary. These items are needed to verify your identity by a notary public.

**Cashier's check:** Obtain a cashier's check made payable to your escrow company in the amount indicated to you by your escrow Officer. A personal check may delay the closing since Escrow and title companies are required by law to have "good funds" (the check must have cleared before disbursing funds from escrow). Wired funds are another method of expediting your closing.

### **Information that the Home Seller needs to know**

#### **What do I need to do before my appointment to sign the deed?**

All parties signing the documents must bring proper identification. Please bring either your valid driver's license, state identification card, or current passport with you to your appointment with the notary. This is needed to verify your identity by a notary public.

#### **When do I sign escrow instructions and where do I do this?**

Generally your escrow instructions are mailed to you.

#### **Do I continue to pay my monthly mortgage payment?**

Yes. Your mortgage payment(s) must be kept current throughout the course of the escrow transaction. If the payments are not kept current, the Lender(s) will assess and collect late charge(s).

#### **When and where do I get my final proceeds check?**

The proceeds check is disbursed upon close of escrow. This is when the escrow officer is able to verify with the county recorder's office that the documents have recorded and legal transfer has occurred. The proceeds check can then be delivered to your Real Estate Agent, picked up from your Escrow Officer, mailed to you or wired directly to your account.

# The Escrow Process

You may have already heard phrases such as “the house fell out of escrow” or “we’re waiting for escrow to close.” So just what is escrow anyway? And what does it mean to a home Buyer or Seller?

Simply stated, escrow is the involvement of an impartial third party in a real estate transaction. This neutral third party acts as an intermediary between the Buyer and Seller. Escrow collects and remits funds as instructed. Buyer’s funds are deposited with the escrow company, which then remits to the Seller on the Buyer’s behalf. The basic concept of escrow is to ensure that both the Buyer and the Seller are protected during any real property transaction. Not only is “escrow” the concept of a third party receiving and disbursing funds, but it also includes other valuable transaction services. In order to facilitate the transfer of property from one owner to another, the best escrow companies will:

- Prepare, review and/or revise escrow instructions.
- Determine the legal ownership and status of the property through a “title search.”
- Request a beneficiary’s statement if a debt is to be assumed by the Buyer.
- Confirm that the Buyer is “qualified” and meets the Lender’s requirements.
- Confirm that the property meets requirements imposed by the Lender and/or Buyer.
- Prorate all related financial matters (e.g., taxes, insurance) involved in the ownership transfer.
- Ensure all legal documentation is complete, including recording deed.
- Comply with time limits imposed in the instructions.
- “Close” escrow when all instructions (Buyer’s, Seller’s and Lender’s) have been fulfilled.
- Disburse funds as instructed, including all related fees (title fees, commissions, payoffs, etc.)
- Prepare a final statement for all concerned parties.

Escrows in California are performed by banks, savings & loans, and title companies as well as independent escrow firms which are licensed by the state of California, and their records are open to inspection by the Corporation Commissioner. In addition, escrow companies furnish the state with annual audits of their books, and all escrow funds must be kept in trust accounts. Thus, the state helps ensure that escrow companies are properly managed and truly act as impartial parties to any real property transaction.

Escrow companies are generally held liable if any instructions are violated during the course of an escrow. No changes may be made to any escrow instructions if changing them would be detrimental to any party involved. It is possible to change instructions once a property has

“entered escrow,” however, but only by mutual agreement. Finally, all escrows have clearly defined time limits. If, for some reason, all instructions cannot be carried out by the end of the time limit, all parties involved are entitled to the return of documents, fees, funds, and other related materials. They also may mutually agree to extend the time period by changing the instructions.

The term “escrow” has come to mean “neutral protection” for the Seller, the Lender and the Buyer. All parties involved in the transfer of real property are impartially protected during the transaction and serviced by professionals intent on ensuring a smooth, trouble-free sale. Look for an escrow company that clearly defines its services and which lists all fees/charges “up front.”

Escrow is an indispensable necessity in today’s marketplace. If you need further explanations during the process, always consult your escrow officer. The escrow company is, indeed, a neutral third party; its job is to ensure all sale conditions are met quickly and efficiently.

# Why Do I Need Title Insurance?

A Real Estate purchase is the single most important investment many people make in their lives. "The Title," or how you take ownership, is insured with title insurance. The purpose of a title insurance policy is to protect the new owners' interest in the property from things that happened in the past of which the new owners would have no knowledge without a title search. Problems with title can limit your use and enjoyment of real estate and have adverse financial consequences.

Title insurance begins with a search of the public records for matters affecting both the property and the individuals concerned. If a discrepancy is found, the history or "chain" of ownership is further reviewed.

## Some examples of what could be disclosed in a search are:

- Outstanding mortgages, deeds of trust, judgments, or tax liens.
- Deeds, wills, and trusts that contain improper vesting, incorrect names, or incorrect legal descriptions.
- Incorrect notary acknowledgments.
- Easements, CC&R's, and rights of other parties.

Even with all the expertise that goes into a title search and examination, hidden defects can emerge after the close of escrow causing unpleasant and costly surprises.

## Examples:

- Previously undisclosed heirs with claims against the property.
- Forged deed that purports to affect said land.
- Mistakes in the public records including erroneous legal descriptions or misspelling of parties names.

Title insurance gives you the security and protection against many title issues and the potential loss of your most valuable asset, your home.

**Definition of Title Insurance:** "Title insurance means insuring, guaranteeing or indemnifying owners of real or personal property or the holders of liens or encumbrances thereon or others interest therein against loss or damage suffered by reason of: a) Liens or encumbrances on, or defects in the title to said property; b) Invalidity or unenforceability of any liens or encumbrances thereon; or c) Incorrectness of searches relating to the title to real or personal property."

# What is Involved in Issuing a Title Policy?

- Escrow company opens title order with the title unit.
- Customer service verifies legal and vesting & sends to escrow.
- Title order goes to searching at title plant.
- Property information is searched and required documents are printed.
- Recorded documents are examined & preliminary title report is written.
- Word processing department types preliminary title reports & enters information into a computer for future retrieval.
- Preliminary title report is securely emailed to Escrow Company & Lender.
- New document/demands & statement of information are submitted to title officer by escrow.
- Title officer reviews new information.
- Upon loan approval, new Lender funds loan.
- Escrow officer sends title all documents necessary to record the sale or refinance.
- Escrow officer sets up recording with title unit and gives title the dollar figure to expect from new Lender.
- Preliminary title report and documents are reviewed for any last minute changes and accuracy.
- Property is checked for tax payments and any newly recorded items that may effect the transfer of title and/or loss of priority.
- Documents record at the County Clerk-Recorder's office.
- Title officer writes the title policies.
- Old loans are paid off & proceeds (if any) sent to escrow.
- Buyer & Lender's title policies are typed & sent out.

# How to Read a Preliminary Title Report

After months of searching, you've finally found it - your perfect dream home. But is it perfect? Will you be purchasing more than just a beautiful home? Will you also be acquiring liens placed on the property by prior owners? Have documents been recorded that will restrict your use of the property?

The preliminary report will provide you with the opportunity, prior to purchase, to review matters affecting your property which will be excluded from coverage under your title insurance policy unless removed or eliminated before your purchase. To help you better understand this often bewildering subject, the California Land Title Association has answers to some of the questions most commonly asked about preliminary reports.

## **Q. What is a Preliminary Report?**

**A.** A 'prelim' is a report prepared prior to the issuing of a policy of title insurance that shows the ownership of a specific parcel of land, together with the liens and encumbrances thereon, that will not be covered under a subsequent title insurance policy.

## **Q. What role does a Preliminary Report play in the real estate process?**

**A.** A preliminary report contains the conditions under which the title company will issue a particular type of title insurance policy.

The preliminary report lists, in advance of purchase, title defects, liens, and encumbrances which would be excluded from coverage if the requested title insurance policy were to be issued as of the date of the preliminary report. The report may then be reviewed and discussed by the parties to a real estate transaction and their agents.

Thus, a preliminary report provides the opportunity to seek the removal of items referenced in the report which are objectionable to the Buyer prior to purchase.

## **Q. When and how is the Preliminary Report produced?**

**A.** Shortly after escrow is opened, an order will be placed with the title company that will then begin the process involved in producing the report.

This process calls for the assembly and review of certain recorded matters relative to both the property and the parties to the transaction. Examples of recorded matters include a deed of trust recorded against the property or a lien recorded against the Buyer or Seller for an unpaid court award or unpaid taxes. These recorded matters are listed numerically as "exceptions" in the preliminary report. They will remain exceptions from title insurance coverage unless eliminated or released prior to the transfer of title.

## **Q. What should I look for when reading my Preliminary Report?**

**A.** You will be interested, primarily, in the extent of your ownership rights. This means you will want to review the ownership interest in the property you will be buying as well as any claims, restrictions or interests of other people involving the property.

The report will note in a statement of vesting the degree, quantity, nature and extent of the owner's interest in the real property. The most common form of interest is "fee simple" or "fee" which is the highest type of interest an owner can have in land.

Liens, restrictions, and interests of others excluded from coverage will be listed numerically as "exceptions" in the preliminary report. These may be claims by creditors who have liens or liens for payment of taxes or assessments. There may also be restrictions of record placed in a prior deed or contained in what are termed CC&Rs - covenants, conditions, and restrictions. Finally, the interests of third parties are not uncommon and may include easements given by a prior owner, which limit your use of the property. When you buy property, you may not wish to have these claims or restrictions on your property. Instead, you may want to clear the unwanted items prior to purchase.

In addition to the limitations noted above, a printed list of standard exceptions and exclusions listing items not covered by your title insurance policy may be attached as an exhibit item to your report. Unlike the numbered exclusions, which are specific to the property you are buying, these are standard exceptions and exclusions appearing in title insurance policies. The review of this section is important, as it sets forth matters which will not be covered under your title insurance policy but which you may wish to investigate, such as governmental laws or regulations governing building and zoning.

## **Q. Will the Preliminary Report disclose the complete condition of the title to a property?**

**A.** No. It is important to note that the preliminary report is not a written representation as to the condition of title. It may not list all liens, defects, and encumbrances affecting title to the land but merely report the current ownership and matters that the title company will exclude from coverage if a title insurance policy should later be issued.

## **Q. Is a Preliminary Report the same thing as title insurance?**

**A.** Definitely not. A preliminary report is an offer to insure, it is not a report of a complete history of recorded documents relating to the property. A preliminary report is a statement of terms and conditions of the offer to issue a title insurance policy, not a representation as to the condition of title.

These distinctions are important for the following reasons: first, no contract or liability exists until the title insurance policy is issued; second, the title insurance policy is issued to a particular insured person and others cannot claim the benefit of the policy.

**Q. How do I go about clearing unwanted liens and encumbrances?**

**A.** You will wish to carefully review the preliminary report. Should the title to the property be clouded, you and your agents will work with the Seller and the Seller's agent to clear the unwanted liens and encumbrances prior to taking title.

**Q. Who can I turn to for further information regarding Preliminary Reports?**

**A.** Your real estate agent and your attorney, should you choose to use one, will help explain the preliminary report to you. Your escrow and title company can also be helpful sources.

**Conclusion:** In a business that is directed at risk elimination, the efforts leading to the production of the preliminary report, which is designed to facilitate the issuance of a policy of title insurance, is perhaps the most important function undertaken.

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## 29 Covered Risks for Homeowners

1. Someone else owns an interest in your title.
2. Someone else has rights affecting your title arising from leases, contracts, or options.
3. Someone else claims to have rights affecting your title arising out of forgery or impersonation.
4. Someone else has an easement on the land.
5. Someone else has a right to limit your use of the land.
6. Your title is defective.
7. Any of the covered risks 1 through 6 occur after the Policy date.
8. Someone else has a lien on your title, including a:
  - a. Mortgage;
  - b. Judgment, state or federal tax lien, or special assessment;
  - c. Charge by a homeowner's or condominium association; or
  - d. Lien attached before or after the Policy Date for labor and material furnished before the Policy Date.
9. Someone else has an encumbrance on your title.
10. Someone else claims to have rights affecting your title arising from fraud, duress, incompetence, or incapacity.
11. You have neither actual vehicular nor pedestrian access to and from the land, based upon a legal right.
12. You are forced to correct or remove an existing violation of any covenant, condition, or restriction affecting the land, even if the covenant, condition, or restriction is an exception in Schedule B.
13. Your title is lost or taken due to a violation of any covenant, condition, or restriction occurring before you acquired your title, even if the covenant, condition, or restriction is an exception in Schedule B.
14. Because of an existing violation of a subdivision law or regulation affecting the land:
  - a. You are unable to obtain a building permit;
  - b. You are forced to correct or remove the violation; or
  - c. Someone else has a legal right to and does refuse to perform a contract to purchase the land, lease it, or secure a mortgage loan to it.

The amount of your insurance for this covered risk is subject to your deductible amount and our maximum dollar limit of liability shown in Schedule A.

15. You are forced to remove or remedy your existing structures or any part of them – other than boundary walls or fences – because a portion was built without obtaining a building permit from the appropriate government office. The amount of your insurance for the covered risk is subject to your deductible amount and our maximum dollar limit of liability shown in Schedule A.

16. You are forced to remove or remedy your existing structures, or any part of them, because they violate an existing zoning law or regulation. If you are required to remedy any portion of your existing structures, the amount of your insurance for the covered risk is subject to your deductible amount and our maximum dollar limit of liability shown in Schedule A.
17. You cannot use the land because use as a single-family residence violates existing zoning law or regulation.
18. You are forced to remove your existing structures because they encroach onto your neighbor's land. If the encroaching structures are boundary walls or fences, the amount of your insurance for this covered risk is subject to your deductible amount and our maximum dollar limit of liability shown in Schedule A.
19. Someone else has a legal right to and does refuse to perform a contract to purchase the land, lease it or make a mortgage loan on it because your neighbor's existing structures encroach on the land.
20. You are forced to remove your existing structures because they encroach onto an easement or over a building set-back line, even if the easement or building set-back line is an exception in Schedule B.
21. Your existing structures are damaged because of the exercise of a right to maintain or use an easement affecting the land, even if the easement is an exception in Schedule B.
22. Your existing improvements (or a replacement or modification made to them after the policy date), including lawns, shrubbery, or trees are damaged because of the future exercise of a right to use the surface of the land for the extraction or development of minerals, water or any other substance, even if those rights are excepted or reserved from the descriptions of the land or an exception in Schedule B.
23. Someone else tries to enforce a discriminatory covenant, condition, or restriction that they claim affects your title based on race, color, religion, sex, handicap, familial status, or national origin.
24. A taxing authority assesses supplemental real estate taxes not previously assessed against the land for any period before the policy date because of construction or change of ownership or use that occurred before the policy date.
25. Your neighbor builds any structure after the policy date – other than boundary walls or fences – which encroach onto the land.
26. Your title is unmarketable, which allows someone else to refuse to perform a contract to purchase the land, lease it, or mortgage it.
27. A document upon which your title is based is invalid because it was not properly signed, sealed, acknowledged, delivered, or recorded.
28. The residence with the address shown in Schedule A is not located on the land at the policy date.
29. The map, if any, attached to the policy does not show the correct land location according to the public records.

# Common ways of holding title to real property

	<b>TENANCY IN COMMON</b>	<b>JOINT TENANCY</b>	<b>COMMUNITY PROPERTY</b>	<b>COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP</b>
<b>Parties</b>	Two or more persons <sup>1</sup> (may be spouses or domestic partners <sup>2</sup> )	Two or more persons <sup>1</sup> (may be spouses or domestic partners <sup>2</sup> )	Spouses or domestic partners	Spouses or domestic partners
<b>Division</b>	Ownership can be divided into any number of interests, equal or unequal	Ownership interests must be equal	Ownership interests must be equal	Ownership interests must be equal
<b>Creation</b>	One or more conveyances (law presumes interests are equal if not otherwise specified)	Single conveyances (creating identical interests); vesting must specify joint tenancy	Presumption from marriage or domestic partnership or can be designated in deed	Single conveyance and spouses or domestic partners must indicate consent which can be on deed
<b>Possession and Control</b>	Equal	Equal	Equal	Equal
<b>Transferability</b>	Each co-owner may transfer or mortgage their interest separately <sup>3</sup>	Each co-owner may transfer his/her interest separately, but tenancy in common results <sup>3 &amp; 4</sup>	Both spouses or domestic partners must consent to transfer or mortgage	Both spouses or domestic partners must consent to transfer or mortgage
<b>Liens against one owner</b>	Unless married or domestic partners, the co-owner's interest is not subject to liens of the other debtor/owner, but a forced sale can occur <sup>4</sup>	Co-owner's interest not subject to liens of other debtor/owner but forced sale can occur if prior to co-owner's/debtor's death	Entire property may be subject to forced sale to satisfy debt of either spouse or domestic partner	Entire property subject to forced sale to satisfy debt of either spouse or domestic partner
<b>Death of co-owner</b>	Decedent's interest passes to his/her devisees or heirs by will or intestacy	Decedent's interest automatically passes to surviving joint tenant ("Right of Survivorship")	Decedent's 1/2 interest passes to surviving spouse or domestic partner unless otherwise devised by will	Decedent's 1/2 interest automatically passes to surviving spouse or domestic partner due to right of survivorship
<b>Possible advantages / disadvantages</b>	Co-owners interests may be separately transferable <sup>3</sup>	Right of Survivorship (avoids probate); may have tax disadvantages for spouses	Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner <sup>2</sup> may have tax advantage	Qualified survivorship rights; mutual consent required for transfer; surviving spouse or domestic partner <sup>2</sup> may have tax advantage

1. "Persons" includes a natural person as well as a validly formed corporation, limited partnership, limited liability company, or general partnership. Trust property is vested in the trustee (usually a natural person or corporation).

2. For domestic partners meeting California statutory requirements, benefits are same as community property, except certain tax benefits may not be available. Note: Two unrelated persons who are either (a) same sex, or (b) opposite sex, if they meet age or disability requirements, may be domestic partners provided they are not married or in a domestic partnership and comply with other statutory requirements.

3. Transfers by married persons or domestic partners may require a quitclaim deed from spouse/partner for title insurance purposes.

4. If co-owners are married or domestic partners, property may be subject to legal presumption of "community property" requiring consent of both spouses/partners to convey or encumber title notwithstanding vesting as "joint tenancy."

THIS IS PROVIDED FOR GENERAL INFORMATION ONLY. FOR SPECIFIC QUESTIONS OR FINANCIAL, TAX OR ESTATE PLANNING GUIDANCE, WE SUGGEST YOU CONTACT AN ATTORNEY OR CERTIFIED PUBLIC ACCOUNTANT.

# Vesting Descriptions

Title to real property in California may be held by individuals, either in Sole Ownership or in Co-ownership. Co-ownership of real property occurs when title is held by two or more persons. There are several variations as to how title may be held in each type of ownership. The following brief summaries reference eight of the more common examples of Sole Ownership and Co-ownership.

## Sole Ownership

A Single Man/Woman

**Example:** John Doe, an single man

A Divorced Man/Woman

A man or woman, having been legally divorced

**Example:** Jane, an unmarried woman

A Married Man/Woman, as His/Her Sole & Separate Property

When a married man or woman wishes to acquire title as their sole and separate property, the spouse must consent and relinquish all right, title and interest in the property by deed or other written agreement

**Example:** John, a married man, as his sole and separate property

## Community Property

Property acquired by a married couple, or either spouse during marriage, other than by gift, bequest, devise, descent or as the separate property of either, is presumed community property

**Example:** John and Mary, husband and wife, as community property

**Example:** Jane, a married woman

## Tenancy in Common

Under tenancy in common, the co-owners own undivided interests, but unlike joint tenancy, there is no right of survivorship; each tenant owns an interest which on his or her death vests in his or her heirs or devisees

**Example:** John, a single man as to an undivided 1/4th Interest as tenants in common

## Community Property with Right of Survivorship

Community property acquired by a married couple when expressly declared in the transfer document to be "community property with right of survivorship," shall pass to the surviving spouse without having to first pass through the administration of the estate

## Joint Tenancy

Joint and equal interest in land owned by two or more individuals created under a single instrument with right of survivorship

**Example:** John and Mary, husband and wife, as joint tenants

## Trust

Title to real property in California may be held by a trustee in trust; the trustee of the trust holds title pursuant to the terms of the trust for the benefit of the trustor/beneficiary

# Who Pays What? A guide to closing costs

## **The SELLER can generally be expected to pay for the following:**

- Standard CLTA owner's Title Insurance
- Escrow Fee (Seller's portion, according to contract)
- Document preparation fee for deed
- Notary Fees
- Seller's portion of the Sub-Escrow Fee
- Termite Inspection (according to contract)
- Termite Work (according to contract)
- Documentary transfer tax (\$1.10 per \$1,000.00 of sales price)
- Any City Transfer/Conveyance tax (according to contract)
- Any FHA or VA loan fees required by the Buyer's Lender
- The payoff of all loans in the Seller's name (or existing loan balance if being assumed by Buyer)
- Interest accrued to Lender being paid off Statement Fees, Reconveyance Fees, and any Prepayment Penalties.
- Home Warranty (according to contract)
- Any judgment, tax liens, etc., against the Seller
- Recording charges to clear all documents of record against the Seller
- Tax proration (for any taxes unpaid at the time of transfer of title)
- Any unpaid Homeowner's dues
- Any bonds or assessments (according to contract)
- Any and all delinquent taxes
- Demand Fees

## **The BUYER can generally be expected to pay for the following:**

- Title insurance premiums (ALTA Loan Policy)
- Escrow Fee (Buyer's portion according to contract)
- Document preparation (if applicable)
- Notary Fees
- Buyer's portion of the Sub-Escrow Fee
- Termite Inspection (according to contract)
- Recording charges for all documents in the Buyer's names
- Tax proration (for date of acquisition)
- Homeowner's Transfer Fee
- All new loan charges (except those required by the Lender for the Seller to pay)
- Assumption/Change of Record Fees for the takeover of an existing loan.
- Recording charges to clear all documents of record against the Buyer
- Beneficiary Statement Fee for the assumption of existing loan
- Inspection Fees (roofing, property inspection, geological, etc., according to contract)
- Home Warranty (according to contract)
- City Transfer/Conveyance Tax (according to contract)
- Fire Insurance Premium for the first year
- Escrow Loan Tie-In Fee

# Understanding Mello-Roos

In purchasing your new home, your future monthly payments will be made up of principal, interest, real property taxes, and insurance, but what is the tax for the Community Facilities District, otherwise known as a Mello-Roos District?

## **Q. What is a Mello-Roos District?**

**A.** Mello-Roos District is an area where a special tax is imposed on those real property owners within a Community Facilities District. This district has chosen to seek public financing through the sale of bonds for the purpose of financing certain public improvements and services. These services may include streets, water, sewage and drainage, electricity, infrastructure, schools, parks, and police protection to newly developing areas. The tax you pay is used to make the payments of principal and interest on the bonds.

## **Q. What are my Mello-Roos taxes paying for?**

**A.** Your taxes may be paying for both services and facilities. The services may be financed only to the extent of new growth. They include police protection, fire protection, ambulance and paramedic services, recreation program services, library services, the operation and maintenance of parks, parkways and open space, museums, cultural facilities, flood and storm protection, and services for the removal of any threatening hazardous substance. Facilities which may be financed under the Act include property with an estimated useful life of five years or longer, parks, recreation facilities, parkway facilities, open-space facilities, elementary and secondary school sites and structures, libraries, child care facilities, natural gas pipeline facilities, telephone lines, facilities to transmit and distribute electrical energy, cable television lines, and others.

## **Q. When do I pay these taxes?**

**A.** By purchasing an interest in a subdivision within a Community Facilities District you can expect to be assessed for a Mello-Roos tax which will typically be collected with your general property tax bill. These special tax payments are subject to the same penalties that apply to regular property taxes.

## **Q. How long does the tax stay in effect?**

**A.** The tax will stay in effect until the principal and interest on the bonds are paid off along with any reasonable administrative costs incurred in collecting the special tax or so long as it is needed to pay the expenses of services, but in no case shall exceed 40 years.

## **Q. How much will the Mello-Roos payment be?**

**A.** The amount of tax may vary from year-to-year, but may not exceed the maximum amount specified when the district was created. In the case of the purchase of a new house within a subdivision, the maximum amount of the tax will be specified in the public report.

# Understanding Probate

Everyone has a will or plan, whether created or by default. Even if you have not made out a will or a trust, you still have a plan - a plan dictated by the laws of the state where you reside upon your death. Making a will is not a way to avoid "probate," the court procedure that changes the legal ownership of your property after your death. Probate makes sure it is your last valid will, appoints the executor named in your will, and supervises the executor's work. You can do several things now that can help your executor and family later, hopefully much later on.

## **I am in possession of a will that distributes the decedent's estate to me, isn't this all I need?**

No. The will must be admitted to probate and the estate of the decedent must be probated.

## **What does "probate" actually mean?**

Generally, probate is a court proceeding that administers the estate of an individual.

## **What is the purpose of "estate administration?"**

Generally, there are five purposes, many of which have subsets to them:

1. To determine that the decedent is in fact dead;
2. To establish the validity of the will;
3. To identify the heirs and devisees of the decedent;
4. To settle any claims that creditors may have against the estate of the decedent; and
5. To distribute the property.

## **Who is the Public Administrator?**

Generally speaking, a public administrator is a person or entity appointed by the State to act when there is no will or relatives.

## **What is the difference between "Testate" and "Intestate?"**

When one is said to have died "Testate," it means he or she died leaving a will. If one is said to have died "Intestate," it means he or she died without leaving a will.

## **What is the difference between an executor and an administrator?**

An "executor" carries out the directions and requests set forth in the decedent's will. An "administrator" is appointed by the court to manage the estate of a decedent who dies intestate.

## **What are the steps to a normal, uncontested probate?**

Very generally speaking they are as follows:

1. Death of the decedent.
2. The will is delivered to the executor or Court Clerk.
3. A petition is filed for the Probate of Will or Letters of Administration.
4. A hearing is held on the petition.
5. Letters of Administration are issued by the Court.
6. Notice to creditors is given.
7. Inventory and appraisal of the estate is made by an independent probate appraiser.
8. File Federal estate tax return. Return states "No Tax Due" or specifies an amount due.
9. Final accounting and petition for distribution.
10. Final decree of distribution.
11. Discharge of personal representative.

## **While real property is "in probate" can it be sold?**

Yes. Without getting into too much detail it can be sold either at private sale in which the executor of the estate negotiates a transaction with a Buyer or at public sale in which the property is sold at public auction.

## **If there is no will, how is the property of the estate distributed?**

Sections 6400 through 6414 of the California Probate Code addresses intestate succession and the distributions. The method and manner of intestate distributions is quite complex and therefore one should specifically discuss intestate distributions with his or her legal advisor.

Information Source: California Land Title Association.



# Understanding Supplemental Property Taxes

Supplemental property taxes have been with us since 1983, but you and your neighbors still may not know what they are, what they do and how they affect you and your property. To help you better understand this confusing subject, here are the answers to some of the most frequently asked questions about supplemental real property taxes.

## **When did this tax take effect?**

The Supplemental Real Property Tax Law was signed by the Governor in July of 1983 and is part of an ambitious drive to aid California's schools. This property tax revision is expected to produce over \$300 million per year in revenue for schools.

## **How will Supplemental Taxes affect me?**

If you don't plan on buying a new property or undertaking new construction, this tax will not affect you at all. But, if you do wish to do either of the two, you will be required to pay a supplemental property tax which will become a lien against your property as of the date of ownership change or the date of completion of new construction.

## **When and how will I be billed?**

"When" is not easy to predict. You could be billed in as few as three weeks, or it could take over six months. When will depend on the individual county and the workload of the County Assessor, the County Controller/Auditor and County Tax Collector. The assessor will appraise your property and advise you of the new supplemental assessment amount. At that time you will have the opportunity to discuss your evaluation, apply for a Homeowner's Exemption, and be informed of your right to file an Assessment Appeal. The county will then calculate the amount of the supplemental tax bill. The supplemental tax bill will identify, among other things, the amount of the supplemental tax and the date on which the taxes will become delinquent.

## **Can I pay my Supplemental Tax Bill in installments?**

All supplemental taxes on the secured roll are payable in two equal installments. The taxes are due on the date the bill is mailed and they are delinquent on specified dates depending on the month the bill is mailed as follows:

1. If the bill is mailed within the months of July through October, the first installment will become delinquent on December 10th of the same year. The second installment will become delinquent on April 10th of the next year.
2. If the bill is mailed within the months of November through June, the first installment will become delinquent on the last day of the month following the month in which the bill is mailed. The second installment will become delinquent on the last day of the fourth calendar month following the date the first installment is delinquent.

## How will the amount of my bill be determined?

There is a formula used to determine your tax bill. The total supplemental assessment will be prorated based on the number of months remaining until the end of the tax year, June 30th.

## How does the proration factor work?

The supplemental tax becomes effective on the first day of the month following the month in which the change of ownership or completion of new construction actually occurred. If the effective date is July 1st, then there will be no supplemental assessment on the current tax roll and the entire supplemental assessment will be made to the tax roll being prepared which will then reflect the full cash value. In the event the effective date is not July 1st, then the table of factors represented in the chart is used to compute the supplemental assessment on the current tax roll.

If effective date is:	Proration factor is:	If effective date is:	Proration factor is:
August 1	.92	February 1	.42
September 1	.83	March 1	.33
October 1	.75	April 1	.25
November 1	.67	May 1	.17
December 1	.58	June 1	.08
January 1	.50	July 1	.0

Example: The County Assessor finds that the supplemental property taxes on your new home would be \$1,000 for a full year. The change of ownership took place on September 15th with the effective date being October 1st. The supplemental taxes would, therefore be subject to a proration factor of .75 and would be \$750.

## Will my taxes be prorated in escrow?

No. Unlike your ordinary annual taxes, the supplemental tax is a one time tax which dates from the date you take ownership of your property or complete the construction until the end of the tax year June 30th.

The information set forth herein is intended as an overview and should not be construed as legal, financial, or tax advice. Consult your tax professional.

# Property Tax Breaks - PROP 19

The Home Protection for Seniors, Severely Disabled, Families, and Victims of Wildfire or Natural Disasters Act.

Proposition 19 amends the California constitution by expanding qualifications to transfer a qualified property's taxable value. These changes could affect your next real estate transaction if the property is eligible.

Proposition 19 will allow a homeowner who is over 55 years of age, severely disabled, or whose home has been substantially damaged by wildfire or natural disaster, transfer the taxable value of their primary residence to:

- A replacement primary residence;
- Anywhere in the state;
- Regardless of the value of the replacement primary residence (with adjustments if "greater" in value);
- Within two years of the sale; and up to three times (but without limitation for those whose houses were destroyed by fire)

Proposition 19 adjusts the rules for the parent-to-child or grandparent-to-grandchild exemption for inherited properties. The child or grandchild may transfer the taxable value of the inherited property if:

- The property is vested and occupied by the heir as their Family Home (primary residence), and the same transferee claims the homeowner exemption. The property tax basis will remain the same, subject to some upward adjustments if the property value, at the time of transfer, is more than \$1M over the original tax basis.
- The transferee claims the homeowner's or disabled veteran's exemption within one year of the transfer to obtain the benefit of the family transfer tax exemption.

Please continue to visit the BOE website <https://www.boe.ca.gov/prop19/> for updates, as additional legislation will provide further clarification. For assistance or questions regarding the information above, please contact the Property Tax Department at 1-916-274-3350.

\*It is not intended to be a legal interpretation, official guidance or relied upon for any reason but instead be a presentation of summary information.

# Do I Need to Homestead My Property?

Previously, partial equity in a home in California is exempt from being used to pay a judgment lien on the property. The partial exemption was either \$75,000, \$100,000 or \$175,000, depending on a variety of factors, including marital status, age, income, etc.

As of January 1, 2021 however, that confusing scheme went away. Governor Gavin Newsom approved Assembly Bill 1885, which amended Section 704.730 of California's Civil Code as follows:

- (a) The amount of the homestead exemption is the greater of the following:
  - (1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).
  - (2) Three hundred thousand dollars (\$300,000).
- (b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations. Essentially, the exemption amounts have been raised significantly, and will adjust for inflation in the future.

But what does all this mean for California homeowners? Under the new law, \$300,000 – \$600,000 of a home's equity can't be touched by judgment creditors. The amount depends on the median sales of homes in the county where the property is located.

There are some caveats:

- a) Those who use their homes as collateral for loans will not be protected by AB 1885. The lender will have the right to foreclose, and the borrower will not qualify for the exemption.
- b) Home owners who choose to sell their homes also won't be protected from judgment creditors – the homestead exemption only applies in the case of a forced sale.
- c) State law does not protect from federal actions. If for example, the IRS or other federal agencies are seizing and selling property, AB 1885 won't help.

The current homestead exemption in California is automatic, homeowners don't necessarily have to file a homestead declaration with the County Clerk. However, if a homeowner does file a declaration, the homestead's equity isn't lost after the home sells — whether that sale is involuntarily or voluntarily. Moreover, if a declaration is filed, proceeds from selling the home are protected for six months after the sale.

For these reasons, if there's equity in the home it's wise to file a homestead declaration if there are serious financial problems. The new law does not seem to contradict or confirm this – but since nothing appears as yet to overturn this rule of thumb, it's best to file the declaration if needed.

Homeowners seeking more specifics on this topic should consult with a real estate attorney.

# Terms You will Want to Know

**Adjustable Rate Mortgage (ARM):** A mortgage with an interest rate that changes over time in line with movements in the index. ARMs are also referred to as AMLs (adjustable mortgage loans) or VRMs (variable rate mortgages).

**Adjustment Period:** The length of time between interest rate changes on an ARM. For example, a loan with an adjustment period of one year is called a one-year ARM which means that the interest rate can change once a year.

**Amortization:** Repayment of a loan in equal installments of principal and interest, rather than interest-only payments.

**Amortized Loan:** A loan that is completely paid off, interest and principal, by a series of regular payments that are equal or nearly equal. Also called a Level Payments Loan.

**Annual Percentage Rate (APR):** The total finance charge (interest, loan fees, points) expressed as a percentage of the loan amount.

**Appraisal:** The act or process of estimating values of real estate or any interest therein.

**Appreciation:** An increase in value of real estate.

**Assumption of Mortgage:** A Buyer's agreement to assume the liability under an existing note that is secured by a mortgage or deed of trust. The Lender must approve the Buyer in order to release the original borrower (usually the Seller) from liability.

**Balloon Payment:** A lump sum principal payment due at the end of some mortgages or other long-term loans.

**Cap:** The limit on how much an interest rate or monthly payment can change, either at each adjustment over the life of the mortgage.

**CC&R's:** Covenants, Conditions, and Restrictions. A document that controls the use, requirements, and restrictions of a property.

**Certificate of Reasonable Value (CRV):** A document that establishes the maximum value and loan amount for a VA guaranteed mortgage.

**Closing:** The final settlement of a real estate transaction between Buyer and Seller.

**Closing Statement:** The financial disclosure statement that accounts for all of the funds received and expected at the closing, including deposits for taxes, hazard insurance, and mortgage insurance.

**Condominium:** A form of real estate ownership where the owner receives title to a particular unit and has a proportionate joint ownership of common area of the structure and the land interest. The unit itself is generally a separately owned space whose interior surfaces (walls, floors and ceilings) serve as its boundaries.

**Contingency:** A condition that must be satisfied before a contract is binding. For instance, a sales agreement may be contingent upon the buyer obtaining financing.

**Conventional Mortgage:** A mortgage securing a loan made by investors without governmental underwriting, i.e., which is not FHA insured or VA guaranteed.

**Conversion Clause:** A provision in some ARMs that enables you to change an ARM to a fixed-rate loan, usually after the first adjustment period. The new fixed rate is generally set at the prevailing interest rate for fixed-rate mortgages. This conversion feature may cost extra.

**Cooperative:** A form of multiple ownership in which a corporation or business trust entity holds title to a property and grants occupancy rights to share-holders by means of proprietary leases or similar arrangements.

**Counter-Offer:** A rejection of an offer by a Seller along with an agreement to sell the property to the potential Buyer on terms differing from the original offer.

**CRB:** Certified Residential Broker. To be certified, a broker must be a member of the National Association of Realtors®, have five years experience as a licensed broker and have completed five required Residential Division courses.

**Deed:** Written instrument which, when properly executed and delivered, conveys title.

**Discount Points:** Additional charges made by a Lender at the time a loan is made. Points are measured as a percent of the loan, with each point equal to one percent. These additional interest charges are paid to the Lender at the time a loan is closed at a rate of return so as to approximate the market level.

**Due-On-Sale Clause:** An acceleration clause that requires full payment of a mortgage or deed of trust when the secured property changes ownership.

**Earnest Money:** The portion of the down payment delivered to the Seller or escrow agent by the purchaser with a written offer as evidence of good faith.

**Easement:** Created by grant or agreement for a specific purpose, an easement is the right, privilege, or interest which one party has in the land of another. (Ex. right of way)

**Equity:** The interest or value which an owner has in real estate over and above the liens against real property.

**Escrow:** A procedure in which a third party acts as a stakeholder for both the Buyer and the Seller, carrying out both parties' instructions and assuming responsibility for handling all of the paperwork and distribution of funds.

**Federal National Mortgage Association (FNMA):** Popularly known as Fannie Mae. A privately owned corporation created by Congress to support the secondary mortgage market. It purchases and sells residential mortgages insured by FHA or guaranteed by the VA, and conventional home mortgages.

**Fee Simple:** An estate in which the owner has unrestricted power to dispose of the property as he wishes, including leaving by will or inheritance. It is the greatest interest a person can have in real estate.

**FHA Loan:** A loan which has been insured by the Insuring Office of the Department of Housing and Urban Development; the Federal Housing Administration guarantees its payment in case of default by the owner.

**Finance Charge:** The total cost a borrower must pay, directly or indirectly, to obtain credit according to Regulation Z.

**FMHA Loan:** Farmers Home Administration. A loan insured by the federal government similar to FHA loan usually used for properties in rural areas.

**Graduated Payment Mortgage:** A residential mortgage monthly payments that start at a level and increase at a predetermined rate.

**GRI:** Graduate Realtors Institute. A professional designation granted to a member of the National Association of Realtors®, who has successfully completed three courses covering Law, Finance and Principles of Real Estate.

**Home Inspection Report:** A qualified inspector's report on a property's overall condition. The report usually includes an evaluation of both the structure and mechanical systems.

**Home Warranty Plan:** Protection against failure of mechanical systems within the property. Usually includes plumbing, electrical, heating systems, and installed appliances.

**Index:** A measure of interest rate changes used to determine changes in an ARM's interest rate over the term of the loan.

**Joint Tenancy:** An equal undivided ownership of property by two or more persons. Upon death of any owner, the Survivors take the decedent's interest in the property.

**Land Contract:** A contract ordinarily used in connection with the sale of property in cases where the Seller does not wish to convey title until all or a certain part of the purchase price is paid by the Buyer.

**Lien:** A form of encumbrance which usually makes property security for the payment of a debt of discharge of an obligation. Example: Judgments, taxes, mortgages, deeds of trust, etc.

**Loan Commitment:** A written promise to make a loan for a specified amount on specified terms.

**Loan-To-Value Ratio:** The relationship between the amount of the mortgage and the appraised value of the property, expressed as a percentage of the appraised value.

**Margin:** The number of percentage points the Lender adds to the index rate to calculate the ARM interest rate at each adjustment.

**Marketable Title:** Merchantable title; title free and clear of objectionable liens or encumbrances.

**Mortgage:** An instrument recognized by law by which property is hypothecated to secure the payment of a debt or obligation: procedure for foreclosure in event of default is established by statute.

**Mortgage Life Insurance:** A type of term life insurance often bought by mortgagors. The coverage decreases as the mortgage balance declines. If the borrower dies while the policy is in force, the debt is automatically covered by insurance proceeds.

**Negative Amortization:** Negative amortization occurs when monthly payments fail to cover the interest cost. The interest that isn't covered is added to the unpaid balance, which means that even after several payments you could owe more than you did at the beginning of the loan. Negative amortization can occur when an ARM has a payment cap that results in monthly payments that aren't high enough to cover the interest.

**Origination Fee:** A fee or charge for work involved in evaluating, preparing, and submitting a proposed mortgage loan charged to the borrower by the lending institution. The fee is limited to 1 percent for FHA and VA loans.

**Personal Property:** Any property which is not real property, e.g., money, savings accounts, appliances, cars, boats, etc.

**PITI:** Principal, interest, taxes, and insurance.

**Planned Unit Development (PUD):** A zoning designation for property developed at the same or slightly greater overall density than conventional development, sometimes with improvements clustered between open, common areas. Uses may be residential, commercial or industrial.

**Point:** An amount equal to 1 percent of the principal amount of the investment or note. The Lender assesses loan discount points at closing to increase the yield on the mortgage to a position competitive with other types of investments.

**Prepayment Penalty:** A fee charged to a mortgagor who pays a loan before it is due. Not allowed by FHA or VA loans.

**Private Mortgage Insurance (PMI):** Insurance written by a private company protecting the Lender against loss if the borrower defaults on the mortgage.

**Promissory Note:** Following a loan commitment from the Lender, the borrower signs a note promising to repay the loan under stipulated terms. The promissory note establishes personal liability for its repayment.

**Purchase Agreement:** A written document in which the purchaser agrees to buy certain real estate and the Seller agrees to sell under stated terms and conditions. Also called a sales contract, earnest money contract, or agreement for sale.

**Real Property:** Land and whatever by nature or artificial annexation is a part of it.



**Realtor®:** A real estate broker or associate active in a local real estate board affiliated with the National Association of Realtors®.

**Regulation Z:** The set of rules governing consumer lending issued by the Federal Reserve Board of Governors in accordance with the Consumer Protection Act.

**Special Assessment:** Legal charge against real estate by a public authority to pay cost of public improvements such as: street lights, sidewalks, street improvements, etc.

**Sub-Division:** A parcel of land that has been divided into smaller parts.

**Tenancy in Common:** A type of ownership by two or more persons who hold undivided interest; without right of survivorship; interests need not to be equal.

**Title Insurance Policy:** A policy that protects the purchaser, mortgagee or other party against losses.

**Trust Account:** An account separate and apart and physically segregated from broker's own, in which broker is required by law to deposit all funds collected for clients.

**VA Loan:** A loan that is partially guaranteed by the Veterans Administration and made by a private Lender.





