



# Title Topics



November

2008

## Housing and Economic Recovery Act of 2008

**Signed into law on July 30, 2008, the Housing and economic Recovery Act of 2008 (Public Law 10-289) (the "Act") will impact real estate practice in several areas. Here's summary of the topic that we hope you will find informative.**

**FIRPTA:** The Act's amendment to the Foreign Investment in Real Property Tax Act (26 U.S.C.S §1445) provides an alternative procedure for a seller to furnish the nonforeign affidavit for the exemption from the 10% withholding tax. The exemption will apply if "(i) the affidavit . . . is furnished to a qualified substitute, and (ii) the qualified substitute furnishes a statement to the transferee stating, under penalty of perjury, that the qualified substitute has such affidavit in his possession." A "qualified substitute" means (a) the person (including any attorney or title company) responsible for closing the transaction, other than the transferor's agent, and (b) the transferee's agent. The IRS has not yet issued regulations or further guidance as to this amendment.

**Foreclosure as to Servicemember:** The Act temporarily amends the Servicemembers Civil Relief Act of 2003 which provides special protections for servicemembers from a sale, foreclosure, or seizure of property (real or personal). As amended, 50 U.S.C.S. Appx. §533 provides that "a sale, foreclosure, or seizure of property for default on a debt

originated before the servicemember's military service **shall not be valid if made during, or within 9 months after, the period of the servicemember's military service"**, except upon court order, or if made pursuant to an agreement. Prior to the amendment, the time period was "during, or within 90 days after" military service. **The change to 9 months will automatically expire on December 31, 2010 and the 90 day period will revive as of January 1, 2011.**

**HOPE for Homeowners Program:** HOPE for Homeowners Program (12 U.S.C.S. §1715z-23) is a *temporary* program offering FHA insurance on loans refinancing distressed homeowners. The program became available as of October 1, 2008 and expires September 30, 2011. Regulations were issued on October 6, 2008 (24 CFR §4001.01, et seq.). This voluntary program includes among its several qualifying conditions that (1) the existing first lien mortgagee agree to accept the proceeds of the Program's new loan as full settlement of all outstanding indebtedness, waive all prepayment penalties and late fees and release all liens on the home, even if the refinanc-

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ing from HUD giving them some rights to share in future appreciation of the home when later sold.)

**When closing refinancing loans made under this Program you must have received (at a minimum): written payoff instructions from the existing first lienholder agreeing to release its liens and the releases from all subordinate lienholders together with their written instructions allowing you to release the lien for no payoff.**

As part of this Program, HUD retains a share of the borrower's equity in the home and a share of the future appreciation in the home. These interests will be evidenced by the borrower's execution at closing of a Shared Equity note and mortgage in favor of HUD and a Shared Appreciation note and mortgage in favor of HUD which will be recorded as a second and third lien on the property.

**First-time Homebuyer Credit:** Under this provision (found at IRC §36), "first-time" homebuyers (defined as an individual having had no ownership of a principal residence during the previous 3 year period) purchasing a principal residence on or after April 9, 2008 and before July 1, 2009 may qualify for a tax credit equal to 10% of the purchase price of the home, up to a maximum of \$7,500. Those who take this credit must repay it

over 15 years, and if the home is sold or ceases to be the primary residence, all remaining payments owed are due. The repayments are paid as an additional tax on the homeowner's returns. The repayment obligation does not appear to be automatically secured by a lien on the home.

We thank our friends at Stewart Title for providing this summary.

Some bookmarks that you may find helpful:

**[www.njactb.org](http://www.njactb.org)**

New Jersey Association of County Tax Boards, contains a useful record search function containing assessment information for the property throughout the state and text materials regarding the assessment process.

**[www.irs.ustreas.gov/formspubs/index.html](http://www.irs.ustreas.gov/formspubs/index.html)**

Internal Revenue Service Forms and Publications. Provides methods to access and acquire both electronic and print media from the IRS.

**<http://ssdi.rootsweb.ancestry.com/cgi-bin/ssdi.cgi>**

Social Security Death Index. Provides a search engine to locate records of deaths through social security accounts.

*For 27 years, Vested Title has stood behind its clients. When it comes to resolving title problems with tax collectors, assessors, county clerks and registers, call upon us and we will do all we can to help you get that title closed.*

## **Vested Title Inc. — Our 27th Year**

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