

# PENN ATTORNEYS TITLE ALERT

**DATE: 10/08/08**

**RE: Title Alert 2008-13**

**Down Payment Assistance Programs**

For your information, here is a special title alert from First American's Home Office Underwriting Group, authored by Gene Aalseth, V.P. & Senior Underwriter, First American.

## **Changes to Federal Law regarding FHA Loans**

Subsection (b)(9)(C) has been added to 12 U.S.C. 1709 to provide:

- (C) PROHIBITED SOURCES.—In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:
- (i) the seller or any other person or entity that financially benefits from the transaction.
  - (ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).

The funds required by subparagraph (A) are the down payment funds – previously 3%, now 3.5% -- required on FHA loans.

One effect of this new law will be to eliminate the down payment assistance programs that home builders funded from sales proceeds. Down payment assistance will still be available from programs that are not funded from prohibited sources. For instance an organization that raises funds by making general solicitations to the public could provide down payment assistance for a low income buyer.

## **Effective Date of the Law – October 1, 2008**

The changes apply to loans for which the lender has issued credit approval for the borrower on or after October 1, 2008

Title Alerts from 1997 to present are available on our website at: <http://www.pennattorneys.com>

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## Escrow Procedures

### ***FHA Loans***

After the effective date of section 1709, do not close any FHA loan that involves down payment assistance from an entity that has received its funding from any of the prohibited sources listed above. If you are unable to make this determination, contact us for guidance.

### **All Loans (including FHA Loans)**

Because of the difficulty of distinguishing between legitimate down payment assistance programs and down payment assistance schemes, the Company will continue to require the following when acting in the capacity as escrow / settlement agent on any other type of loan transaction involving a down payment assistance program, including a FHA loan that appears to be in compliance with section 1709.

1. The fact that down payment assistance is being provided must be disclosed in writing to all parties to the transaction.
2. All parties to the transaction must acknowledge the existence of and agree to the providing of the down payment assistance. The lender's authorization may take either of the following forms:
  - a. Written authorization from a corporate officer of the lender who has authority to bind the lender; or
  - b. Clear reference to the down payment assistance program in the lender's loan instructions.

Written authorization or instructions from a loan broker do not meet the requirement of written authorization from the lender, because they are not binding on the lender.

If written authorization from all parties can't be obtained or the circumstances of the transaction seem suspect, contact your underwriter for guidance.

**[Company Name]**  
**[Address]**  
**[Phone - Fax - ]**

**ACKNOWLEDGEMENT AND AUTHORIZATION REGARDING DOWN  
PAYMENT ASSISTANCE / GIFT FUNDS**

To: *[Company Name]*, Escrow Holder  
**, Escrow Officer**

*[Date]*  
*[File No:]*

Re: *[Property Address]*

As disclosed by the attached documentation furnished to Escrow Holder, the use of down payment assistance / gift funds is involved in the purchase of the above-referenced property. The undersigned, being all of the principals to the transaction, hereby acknowledge and authorize the use of said funds in the closing of this transaction. The undersigned further agree to hold Escrow Holder, in its capacity of escrow agent and the title insurer, harmless with regard to its participation in this transaction as it pertains to the use of said funds.

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Lender

**[Company Name]  
[Address]  
[Phone - Fax - ]**

**ACKNOWLEDGEMENT AND AUTHORIZATION REGARDING DOWN  
PAYMENT ASSISTANCE / GIFT FUNDS**

To: *[Company Name]*, Escrow Holder  
**, Escrow Officer**

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\_\_\_\_\_  
Seller

\_\_\_\_\_  
Seller

\_\_\_\_\_  
Buyer

\_\_\_\_\_  
Buyer