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ResearchReport

Shared Appreciation Agreements

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Issue

Describe how Connecticut regulates shared appreciation agreements (SAAs, also referred to as shared appreciation mortgages).

Summary

Under Connecticut mortgage law, an SAA is an advance of money in exchange for an equity interest in residential real estate or a future obligation to repay when a certain event happens, like an ownership transfer, maturity date, or the borrower's death (CGS § 36a-485).

Connecticut explicitly includes SAAs as a type of "residential mortgage loan" in its mortgage professional regulation statutes, meaning that entities and individuals who make, originate, or broker them generally must be licensed and regulated by the state Department of Banking as they are for providing other residential mortgage loans.

But the law requires mortgage lenders who offer to make these agreements to give prospective borrowers specific written disclosures within three business days after they apply for the SAA. The required disclosures include, among other things, an informational statement, the proposed agreement and transaction details, the method of determining the subject property's fair market value, the interest charged, and repayment scenarios (CGS § 36a-498i).

Required Disclosures

Connecticut law requires SAA lenders to give prospective borrowers a specific informational statement letting them know that (1) they are not required to complete the agreement because they received the disclosures or signed a loan application; (2) the loan will give the lender a mortgage and shared interest in the property, meaning that the borrower could lose the property and money put into it; and (3) they may wish to consult an attorney.

It also requires disclosure of the following:

1. financial information relevant to the proposed SAA agreement, including if prepayment ends it, such as through the lender receiving some or all of the sale proceeds for the property that is the subject of the agreement;

2. agreement and transaction details, including the lender's contact information, transaction amount, cash sum to be paid to the prospective borrower, starting value for appreciation sharing, term of the agreement, and property's estimated current fair market value;

3. the method to determine the current fair market value and its final value when the agreement is ended;

4. any applicable interest charged;

5. the limit of the lender's share of appreciation or equity in the property; and

6. an advisory to consult with a tax advisor on the agreement's potential tax implications.

Lenders must also include examples of repayment for the proposed SAA, based at least on the following scenarios:

1. settlement after 5, 10, 15, and 30 years, with each up to the agreement's maximum term;

2. no change in the subject property's market value; and

3. changes in the property's market value (a) over the agreement's term at the following three total rates: 10% depreciation, 3.5% appreciation, and 5.5% appreciation and (b) reflecting the actual average appreciation or depreciation rate for all dwellings or residential real estate in Connecticut during the period equal in length to the proposed agreement's term that occurred immediately before it (for example, the rates from the past 10 years if the agreement has a 10-year term).

Lastly, information and corresponding calculations for the proposed agreement must be included on the following, if they apply: calculated appreciation amount, appreciation-based charge, accrued or charged interest, principal amount to be repaid, and the lender's total calculated share of appreciation or equity (and any limit to it).

For each of the above proposed agreement repayment scenarios (based on term length and market value), the lender must also disclose the (1) actual amount to be paid to the lender, including any unconditional administrative fees or reimbursement of protective advances to be paid at the time of the agreement's settlement, and (2) total cost to the borrower, shown as an annual percentage rate to allow for a comparison, under each scenario, of the cost at the time of the agreement's settlement with the cost of a traditional mortgage loan.

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