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The current state of the residential real estate market: To infinity and beyond

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To say the last few years have been a time of unrest in the real estate market would be an understatement. With failing banks, plummeting housing prices and foreclosures run amuck, consumers have been understandably gun-shy about jumping into the market. In a span of less than 10 years we have gone, arguably, from under regulated to over regulated, and are currently struggling to find a workable balance. While there are a multitude of issues to contend with, currently two of the biggest to be aware of are homesteads and foreclosures.

Homestead

Recent legislation and case law, while adding clarification to some issues, has only managed to cloud others. On March 16th, 2011 a new homestead law went into effect in Massachusetts (2010 Act). A homestead is a protection of the equity in property up to \$500,000, and in the case of an elderly couple or a disabled couple, up to \$1 million. The 2010 Act made it clear that a homeowner whose property is owned in trust can enjoy the benefits of homestead protection. What was not clear, however, was whether the 2010 Act expanded or clarified prior law, and that uncertainty led to litigation. The Boyle case brought clarification by holding that a homestead filed by a trust prior to March 16th, 2011 was ineffective. That's the bad news. The good news is that a new homestead can be used in conjunction with current estate planning practices, including trusts.

Foreclosure

Foreclosure litigation makes purchasing foreclosed properties both difficult and dangerous. The most recent case Eaton, wreaks havoc with current foreclosure practices. In Eaton, the court held that the foreclosing entity must not only have the mortgage (as was common), but also a copy of the underlying note. This is a 180-degree departure from previous foreclosure practice in Massachusetts, which required a record of the mortgage, but not the underlying note. For this reason, it is important to be sure that the title exam performed in connection with the purchase of a foreclosed property is comprehensive. This point cannot be stressed enough. While the holding in Eaton, unlike its predecessor cases, is only prospective in application, the effects will still be felt harshly for buyers with a foreclosure in the chain of title. A clear chain of title is essential to a successful home purchase.

What To Look Forward To

Despite many uncertainties in the market, it has been reported that home sales in Massachusetts increased 27% from July 2011 to this July, with nearly 5,000 single family home sold this July. With home prices low (but increasing), and interest rates historically low (but likely to increase), it may be time for more buyers to dive into the real estate market.

Now, more than ever, proper representation is critical to be sure you purchase a home, and not a problem....and to protect that home from creditors with a homestead (in a trust or otherwise). Before

engaging in any real estate transaction call a qualified real estate attorney and real estate broker....
don't be caught uninformed and under represented.

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