

RESOLUTION 2010-06

A RESOLUTION OF THE CITY OF GARIBALDI ADOPTING A POLICY REGARDING HOUSING REHABILITATION LOANS AND TRANSFER OF PROPERTY BY GRANTOR TO GRANTOR'S REVOCABLE LIVING TRUST.

WHEREAS, Federal law preempts states from prohibiting lenders executing due-on-sale clauses in loan agreements, unless a state adopted such a policy during a particular window of time. Federal law also exempts a lender from executing a due-on-sale clause where the transfer is to a revocable living trust and there is no change in occupancy; and

WHEREAS, Oregon law does not appear to prohibit the acceleration of a loan under the trigger of a due-on-sale clause when property is transferred to a new owner; however Oregon courts to date have not ruled on this issue and the state law is uncertain; and

WHEREAS, A revocable living trust is a legal entity lawfully used as an estate planning tool whereby an individual may transfer property to a trust with the property owner as the beneficiary of the trust; and

WHEREAS, For the city's purposes, where the property owner obtained a Housing Rehabilitation Loan from the city and agreed to guarantee the loan with a deed of trust and promissory note, transfer of the property to a revocable living trust with no change in occupancy of the property and where the owner is the same as the trustee and beneficiary of the revocable living trust, does not affect the terms of the loan except for the due-on-sale clause; and

WHEREAS, The city finds a transfer of property secured by its trust deed to a revocable living trust is not likely to impair the terms of the loan or the city's remedies; provided, however, the city may require the deed of trust and promissory note to be recorded in the name of the new grantor trust to protect the city's interests; NOW THEREFORE

THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:

Section 1. Policy on Transfer of Trust Deed to Revocable Living Trust: With regard to any deed of trust recorded to secure a Housing Rehabilitation Loan approved by the City of Garibaldi, where the City of Garibaldi receives notice the property owner intends to transfer the property to a trust and provided the transfer otherwise appears to meet the exception stated in 12 U.S.C. section 1701j-3(d)(8), the transfer will not in itself cause the city to accelerate the loan or otherwise execute the trust deed due-on-sale clause, provided the property owner as trustee of the living revocable trust a) acknowledges in writing that the trust assumes and inures to all obligations of the city's deed of trust, promissory note, and other related loan documents as of the date of the transfer of property to the owner's revocable living trust and b) agrees to be responsible for recording a new deed of trust deed and promissory note in the name of the trust. The city may provide the form of document or may accept documents from the grantor that meet city's requirements.

Section 2. Discretionary Conditions: Based on the information provided to the City of Garibaldi, the City of Garibaldi may require, as a condition of agreeing to the transfer, that the loan recipient be responsible for recording a promissory note and trust deed in the name of the trust as grantor and reciting an agreement to adhere to all terms of the existing loan.

Section 3. Delegation of Authority: The Garibaldi City Council delegates to the City Attorney and staff authority to implement this policy with any documentation as may be necessary or required.

Section 4. Application and Procedure: The Garibaldi City Council will review any request made under this policy. The Garibaldi Housing Rehab Loan Board loan is authorized to review the individual request, request and obtain any information necessary to review the proposed transfer, and

make a recommendation to City Council whether the proposed transfer meets the requirements of Section 1 of this resolution.

Section 4. Recitals: The recitals of this resolution are incorporated herein by reference and adopted in support of this policy.

Section 5. Effective date: This resolution is effective as of the date of its adoption.

PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR, this 19th day of April, 2010.


Hon. Suzanne McCarthy, Mayor

ATTEST:


John O'Leary, City Administrator