

LEGAL TOPICS

Changes to Homebuyer Tax Credits and Title Insurance Mineral Coverage by John F. K. McGill

The tax credit for first-time homebuyers has been expanded and extended by the Worker, Homeownership and Business Assistance Act of 2009 (the "Act"). The tax credit was to apply only to sales to first-time homebuyers that closed on or before November 30, 2009. Now it applies to sales to first-time homebuyers closing on or before **April 30, 2010**. In addition, if there is a binding sales contract in place on April 30, 2010, the credit can apply to sales pursuant to such contracts that close on or before **June 30, 2010**.

The income limits for first-time homebuyers have been expanded. For sales occurring after November 6, 2009, the income limits are \$125,000 for a single taxpayer and \$225,000 for married taxpayers filing jointly. The income referred to is "modified adjusted gross income" as defined by the IRS. Above the income limits the credit is phased out, so first-time homebuyers with incomes slightly above the limits may qualify for a partial credit.

The amount of the credit remained unchanged. It remains 10 percent of the sales price of the home with a cap of \$8,000. The credit is a tax credit. It is refundable. If a taxpayer qualifies for a credit of \$8,000 and has tax liability of only \$3,000, the taxpayer will receive a refund of \$5,000.

Many features of the previous credit remain the same. The definitions of principal residence and first-time homebuyer have remained the same, although persons under 18 years of age or deemed as dependents by another taxpayer are specifically excluded. Purchases from related parties are still excluded. In an attempt to combat fraud, there is now a requirement that documentation of the sale be filed with the tax return claiming the credit.

In addition to the modification of the first-time homebuyer tax credit, the Act also created a

tax credit for persons who are not first-time homebuyers. This tax credit for "long term residents of same principal residence" applies to homeowners who have owned and occupied a home for at least five consecutive years during the eight year period ending on the closing of the purchase of a new principal residence. The maximum amount of this credit is \$6,500 for married taxpayers and \$3,250 for single taxpayers. It is calculated as 10 percent of the sales price and is not available for purchases of homes priced over \$800,000. The income limits and phase out rules are the same as those now applicable for first-time homebuyers. The same limitations on purchases from related parties apply. The Act also contains special provisions for members of the armed services and others on official extended duty outside of the United States.

New Title Insurance Rules Relating to Mineral Estates

Effective **November 1, 2009**, the Texas Department of Insurance (the "Department") is permitting title companies in Texas to issue policies containing general exceptions to minerals. These general exceptions may either be shown in the property description on Schedule A or as an exception on Schedule B. The Department has also promulgated two new endorsements to title insurance policies, T-19.2 and T-19.3. T-19.2 is available for residential property of one acre or less, and office, industrial, retail, mixed use and multi-family property. It covers losses to improvements, excluding vegetation, resulting from the exercise of mineral rights. T-19.3 is available for all other properties and covers damages to permanent buildings. The premium for each of these endorsements is \$50. It appears that the Department is considering requiring a credit against the basic premium of policies which includes a general mineral exception, but no final decision on the credit seems to have been reached.

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