

Revolving Credit Line Mortgages: a Real Estate Law Exception (or Exemption) to the Rule

by Isaac Benmergui, Esq on May 24, 2014



While those revolving credit lines for mortgages may be tricky, affording a bit too much flexibility for the borrower, you do have some options to save you from the drowning in debt. Case in point: you have what's called "section 253-b" of the mortgage tax statute in New York, for instance, stating that you may secure a principal amount of less than \$3MM on your mortgage loan and re-advance, repay or draw more than that amount *without* incurring additional mortgage tax. Surprise! And what a pleasant surprise it is....

Hold your houses (or horses), though, as that's not *always* the case with this particular facet of real estate law. Exceptions to the rule can occur. Take, i.e., a building loan contract. That type of contract won't apply under the section 253-b. Additionally, if you're to take out that mortgage loan, better secure *only* the revolving credit line and nothing else with it. If you, for example, get both a \$2MM revolving credit line and a \$1MM term loan, even though you may still fall under that limitation of \$3MM, you won't get the exception at all. You will still pay that additional mortgage tax if you go over the principal amount.

The debt instrument, too, can play a role in whether or not you'll qualify under real estate law. It really doesn't matter if the revolving credit line is under \$3MM if the actual *credit agreement* states that the *maximum* principal amount can actually go over \$3MM. In that instance, you won't qualify for the exception to the rule either. Fourthly, re-advances made to the borrower under that revolving credit line versus the guarantor or mortgagor won't qualify as well.

Be very careful of how a mortgage is laid out. This exception (or exemption) to the rule of revolving credit line mortgages in New York is only an example of how you might have an option available to circumvent additional taxes or charges, but just be sure to follow all the requirements necessary to make it happen!

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