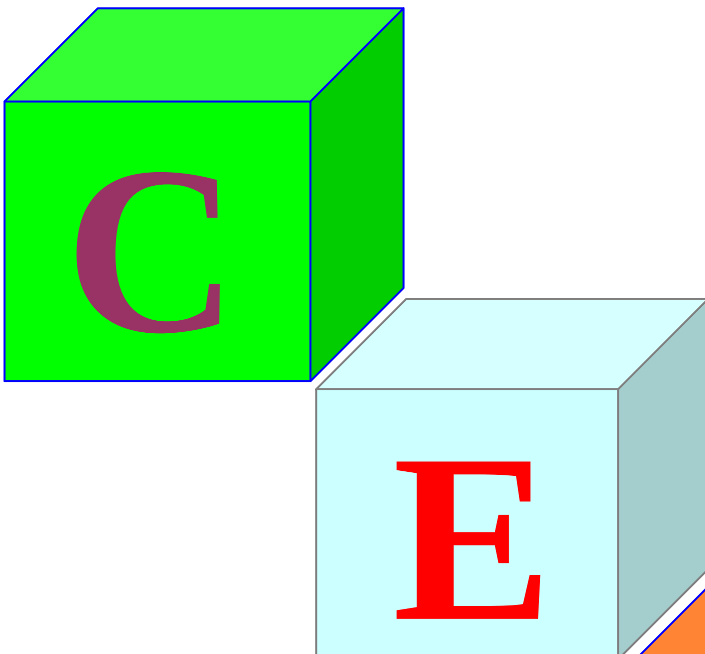
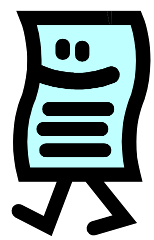
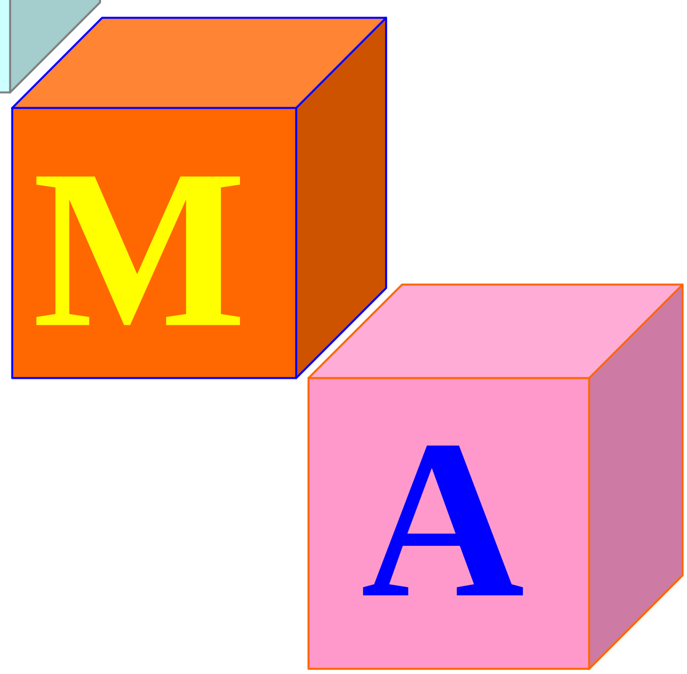
BORROWER'S FIRST BOOK ON CEMA'S

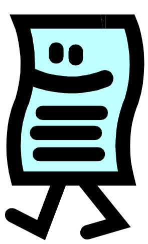
A TALE OF TWO MORTGAGES





By Kenneth B. Schwartz





DISCLAIMER

This work provides a generalized discussion as to various matters in connection with the refinance of mortgages on residential real estate within the State of New York, particularly as to consolidation extension modification agreements and related subjects. Your situation may differ from the fact patterns discussed in this book and if it does, the costs and legal implications could differ. Always consult with your legal adviser if you have questions or concerns.

We based this work upon our interpretation of governing laws, and lender policies in the State of New York as they presently exist. Laws, the interpretation of laws and lender policies are always subject to change. The discussion in this book may or may not reflect governing laws, interpretations of laws or lender policies as of the date you read it.

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PREFACE

Hello. It's me again. I wrote Mortgages to Music and now I'm back in a slightly different style with something that's near and dear to everyone who's ever gone through a purchase or refinance of real estate in New York. Money. Saving money. Put aside all that techno gibberish with all the legal crap and those funky words that drag and drone. It's about money. Serious money, not in the hundreds. We're talking five grand, ten grand, maybe lots more. That's what CEMA's do and that's what everyone cares about.

And by the way, I made this one big satire cause it can get real dry whether you take it straight up or on the rocks. I'm pretty sure of that. I started out in a classic how and why, follow the dots format but I couldn't get past the first few sentences. Too boring. Monotonous. Didn't want you falling asleep before I get to my punch line, my action packed ending that'll leave you with that profound feeling about life in general, how your decision to CEMA will become a life changing experience. So read on, lots of surprises.

Oh and before I forget. My dedication. No book's complete without a wonderful warm dedication. I dedicate this to … ahh …umm… I'm fumbling so bear with me, and here it goes.

I dedicate this to everyone who dared inspire me into being an attorney and confining my daily thoughts to real estate, mortgages in particular. It started with my mother and father, my dear grandmother, all of whom are now looking down and shaking their heads in one huge question mark when they read this book. It continues with my wife Valerie who controls the gates and helps me run my practice. And my three children who remind me every waking moment of every day about the importance of saving your pennies.

Hope you like the book and find it helpful. Give me a call. Look forward to hearing from you.

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CHAPTER ONE - ***ONCE UPON A TIME***

Once upon a time there lived a House and Mortgage. Not just any run of the mill, teeny weenie Mortgage that took little or no money to pay off. A big, pricey thing with a life of its own that took lots of cash to create in terms of recording fees like mortgage taxes to that bastion of anti capital – the County Clerk. Original Bank held the Mortgage. Terms were good. House and Mortgage got along just fine.

House lived in New York City and so did Mortgage.

CHAPTER TWO - ***THEN ONE DAY***

Then one day, one bright sunny day in July when House and Mortgage had nothing better going on, they decided that Mortgage's interest rate was too high and they should increase Mortgage and get some cash, cash for lots of improvements to House like an upstairs dormer and an in ground swimming pool.

It's not that House didn't like Mortgage or that House grew tired and wanted someone new, someone younger or smarter, someone different. No. It wasn't that. Not a compatibility thing. House needed something bigger, something more consistent with market conditions and declining interest rates. Mortgage seemed too unstable cause she kept adjusting from time to time, always going up. Perhaps they needed to part ways for the time being. "It's for the best," House thought, "good for both of us."

And so it was, House went to Second Bank and applied. He submitted a written application and gave lots of info about himself.

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CHAPTER THREE - *THAT NASTY MORTGAGE TAX*

It was rainy and cool that day so House wasn't in a great mood, a bit more touchy than usual and ready to bite someone's head off for all the wrong reasons. He tried group therapy years back – but it didn't work. "Bunch of wacko's" he said. House and Mortgage would soon go separate ways, they made up their minds. Sad, but inevitable.

Noon. The mail arrived. An envelope from Second Bank, not particularly large or thick, a few pages at most. House anxiously opened it. Good news maybe.

The first page read "Good Faith Estimate." Lots of items underneath with numbers next to them and then a grand total, "Cash to Borrower" - $100,000. House panted and took a few deep breadths. Format's less than simple to understand but one thing stood out. The item marked "Mortgage Tax." You can't miss it. $11,525.

The number didn't move. It sat there, detached and removed.

Slam. Hinges shook as House slammed his doors.

Ka plunk. Squeak. A few floorboards gave way.

Almost twelve thousand dollars, House said it again and again but the number just remained motionless, no change. House thought, "cross out twelve grand and you've got "Cash to Borrower" - $111,525, not $100,000. Not like he's purchasing. Just a refi, swapping one mortgage for another, so what's the big deal. He paid mortgage tax years ago on the purchase so why charge him again. Didn't make sense.

So House called Second Bank. Line busy.

House called again. "Listen carefully cause our menu

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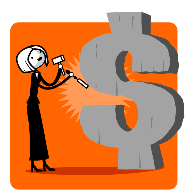
options have changed," the voice told him to hang and keep pressing so that's what he did.

"Good afternoon and thank you for calling Second bank, America's most premier mortgage lender. My name is Loan Officer and how can I help you today?"

"Ms. Officer, this is House. I received a good faith estimate today and it doesn't make sense. Need your help. Closing costs way too high, especially that mortgage tax. You're charging on the full loan amount like it's a purchase and that's wrong cause I already own me and I'm just taking out a new mortgage and paying the old one off."

"Sir, let's see … Oh… Ahh… Ooo… There we go…$11,525 in mortgage tax. That's to the County Clerk as their tax for recording the new mortgage. Nothing to do with us." Loan Officer's voice tailed off as she swallowed hard, tough one to sell particularly when you can't even deduct it on your income tax return.

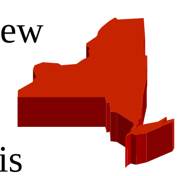


Silence. Dead silence. Not a peep from House or Loan Officer.

Ten seconds.

Winded but audible, House sputtered a few gasping breadths, "But I read something, some Tale of Two Mortgages with all kinds of pictures written by What's His Name in Carle Place, Long Island … and that says that if you paid mortgage tax once you don't have to pay it again." House placed both windows on his roof and prayed for relief, just a little break, that's all he needs.

Loan Officer paused cause she didn't know what to say. New York's real different from most other states and she wasn't used to New York since she spent most of her time working on deals in Florida and California. "Hold on House, I'll get What's His Name in Carle Place on the line and see what he says. "We'll figure it out."



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And so House and Loan Officer called What's His Name in Carle Place and left voice mails. They waited.

CHAPTER FOUR - *TO CEMA OR NOT TO CEMA*

"Good afternoon House," What's his name in Carle Place seemed a bit puzzled since the voice mail didn't say why he called. "And what can I do for you."

"Can I call you What's His Name for short?" House wanted to keep things brief.

"Sure House, no problem." Informality often works best.

"Here's my deal. Took out Mortgage from Original Bank three years ago. Almost on a lark, semi blind date. $500,000. Now I need to part ways with Mortgage and get a new one for $600,000. Don't wanna pay mortgage tax again. Can you help me?"

"Sure House, no sweat, do it all the time. We'll have Original Bank assign its mortgage to Second Bank and Second Bank will do what's called a Consolidation Extension Modification Agreement or CEMA for short. That'll save mortgage tax as to any principal you still owe on the Original Bank Mortgage. You'll pay mortgage tax on any additional principal. Here's how it goes. Five easy steps:

1. Contact Original Bank and request an assignment of its Mortgage to Second Bank. That involves calling or writing Original Bank and having it pull the file and preparing some minor paperwork. It's not complicated but it usually costs a few bucks, often between $400 and $700. Sometimes takes 3 to 6 weeks advance notice and maybe even more, and worse yet, some banks won't even do it saying it's not worth the trouble.

2. Get copies of documents from Original Bank and give them to Second Bank. This should include (a) all mortgages, (b) all promissory notes, (c) all prior assignments of the mortgage(s) and

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(d) a payoff letter showing all balances due under the mortgage(s) including principal, interest and other charges.

3. Confirm that Original Bank can produce the originals and it will exchange them when New Bank disburses on the new mortgage loan.

4. New Bank does a brand new mortgage for any "new money" being borrowed, over and above the principal due Original Bank.

5. New Bank prepares a Consolidation, Extension and Modification Agreement that squashes together all the old mortgages plus the new mortgage due to New Bank.

"And tell me What's His Name, do I save the whole mortgage tax or do I save only a part of it?" House spoke with confidence like he's really onto something.

"Not exactly, you'll save a lot of mortgage tax, certainly enough to make it worthwhile, but you won't save everything. What's His Name sounded a tad jittery but he rambled on.

"You'll save whatever mortgage tax you paid on the unpaid principal of your existing mortgage, specifically the unpaid principal on your existing loan with Original Bank. But there's a few expenses, stuff you can't avoid. What's His Name spoke with conviction. Folks ask him the same question dozens of times every week.

"Sounds complicated or maybe it's me. Am I paying the 12 grand or not?" House had little patience for legal doubletalk.

"Here's how it goes House. Step by step:"

1. "Look to the unpaid principal on your existing mortgage with Original Bank. What I've got here says it's just under $490,000. What's His Name looked at a letter from Original Bank breaking out principal and interest. "Forget about the original sum you borrowed and any tax you paid at that point. You won't save that amount

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dollar for dollar. Got a work with unpaid principal only, that's what the rules say."

2. "To get your gross  savings multiply unpaid principal times your mortgage tax rate, that's the rate which you the borrower will pay to record a mortgage. New York City's real expensive, it's 1.8 percent, and there's a surtax for an additional 1/8 of one percent when the mortgage exceeds $500,000. Your new $600,000 mortgage would exceed $500,000 so your savings rate equals 1.925%. If you do the math that's a gross savings of $9,432.50 or 1.925% times $490,000."

3. "Deduct the fee that Original Bank or its attorneys will charge for preparing an Assignment of Mortgage, the document which transfers the Original Bank Mortgage to Second Bank, and for delivering all the original documents to New Bank. That varies but it's usually $400 to $700."

4. "Deduct the fee that Second Bank may charge for doing the CEMA. Most lenders don't charge but some will get $300 or $400."

5. "Deduct the fee that New Bank's attorneys will charge for doing the CEMA. It's usually about $200 to $300."

6. "Deduct the additional recording fees you'll pay the County Clerk for recording the CEMA and an affidavit the County Clerk requires to record the CEMA. That's another $250 to $300 or so.

House scratched his roof and furrowed the gutters just below as a few stray leaves all brown and perforated, floated up and then sideways as they gently swayed in an unusually cool breeze, not common in northerly Queens this time of year. Early signs of  autumn House thought. 

"So let's see What's His Name, we've got,

- Gross Savings of $9,432.50,

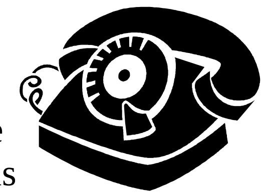
- Less, fee to Original Bank of say, $500,
- Less, fee to New Bank – possibly, of 300,
- Less, fee to New Bank attorney of about $250,
- Less, fee to County Clerk for another $250."

"So when all's said and done What's His Name, that amounts to net savings of $8,132.50." House felt he's onto something but he needed just a touch of positive reinforcement, good for the soul.

"Yep House, sounds like we're on the same page." What's His Name wasn't into small talk, he needed to move on.

House relaxed and leaned back. He got his answer.

CHAPTER FIVE - ***ASSIGNMENTS TO THE RESCUE***



The phone rang, rang, rang but nobody picked up. House's third attempt this afternoon at reaching the Original Bank attorney to ask for an assignment of his mortgage. That's the starting point according to What's His Name.

"Yeah. Law Office," her voice sounded old and crusty like she's done it forever and it's time to move on. "Hold on." Beep, beep, beep. Click.

"What the …" House caught himself. Count to ten and don't get crazy, just try again. House was determined, he wouldn't let her ruin his day.

"Yeah, what a ya want." The voice didn't change a bit.

"It's House, I need an assignment of mortgage from Original Bank to Second Bank. Can you handle it for me?" His second story went up and down ever so slightly. Getting the words out, amazing how good it feels.

"You send in the form sir? Can't do a thing till I get the form. The voice did her best not to help.

"What form, can you fax it?" House tried, he really wanted to make this work.

"Number? What am I, a mind reader?" The voice wasn't backing off.

And so it was, House gave his fax number and got the form.

The form required info about House. And $250 to get it going, certified funds only.

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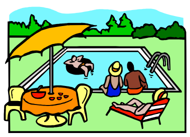
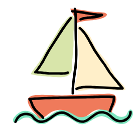
Four to six weeks to get the assignment, that’s what the form said. Well worth the wait House figured.

House sent in the form. He paid the fee.

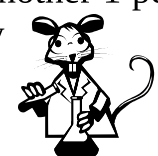
CHAPTER SIX - ***LAY IT ON ME***

Mid August in Queens means a very special time of the year to those in summer mode who thrive on short sleeves and all that heat and humidity can offer like pool clubs, baseball and bicycles. An outdoor barbeque. Picnics in Flushing Meadow Park. An early morning jaunt in the bay, right off Whitestone Park.





To House it meant something different, quite different. Things were coming to a head between House and Mortgage so they needed to move along and get on with their lives, as planned. House was getting antsy about the interest rate he agreed upon with Second Bank, a rate they locked in for 30 days only. And 30 days was set to expire next week, leaving all kinds of horrifying possibilities as to where his new rate might go. Another 1 percent meant no paint jobs this fall. Another 2 percent meant dirty windows and no exterminator. Pests perhaps. Vermin.



And just when it seemed darkest the phone rang. House scrambled, "Hello" he said. His usual monotone till he lets his guard down.

"House," it's the Voice. She sounded impersonal as ever, maybe even angry like she's accusing him. We're ready. "Got all your docs so we're waiting on you."

House beamed. He called What's His Name as the attorney for Second Bank and they scheduled a closing for that Friday. Enough time for What's His Name to draft a CEMA and get all the Second Bank papers in order. Clear sailing ahead.

CHAPTER SEVEN - *AND THEY LIVED HAPPILY EVER AFTER*

9:30 AM, Friday, at the Offices of What’s His Name in Carle Place. Fax machine sounding off and Photo Copier wailing away with page after page spitting into nice neat piles. Coffee brewing.

“Good morning ma’m,” House stood in reception and gave his usual warm greeting with that coy little smile that always gets women on his good side. “Here for my closing.” House stood tall and confident.

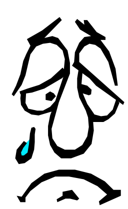
“Yes Mr. House,” step this way. Receptionist led House into the side conference room with a long black table in the middle, one big rectangle. Lots of chairs. A woman either side of 50 sat at one end with layers upon layers of makeup. She seem captivated by an image in the pocket mirror she held inches away from her face.

“Mr. House I’m Title Closer. Here to close your loan.” She sounded detached, somewhat noncaring. Her mouth kept moving up and down as she took turns chewing her Bazooka and blowing bubbles till they burst into snaps and pops. Maybe a crackle here and there.

Moments later What’s His Name walked in, “Good morning House, I’m What’s His Name.” House felt relieved, he’s made it.

And so House signed all the papers that What’s His Name gave him and they closed with House paying minimal mortgage tax. It only applied to the additional sums he borrowed from Second Bank.

As House stood to leave a few tears fell from the corner of his right eye, just above the cracked shutter. “So What’s His



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Name, what will become of Mortgage, what will they do with her, where will she go?" Down deep House still really cared, he couldn't hide it.

"Mortgage isn't going anywhere House," What's His Name spoke in his usual bedside manner. We're assigning Mortgage to Second Bank so she's staying in place, exactly where she was.

"But what about New Mortgage, can Mortgage and New Mortgage both stay together in one place?" House appeared surprised. Happy but confused.

"Absolutely House, that's what CEMA's are all about. They consolidate mortgages and combine them into one uniform whole." What's His Name truly had talent for words.

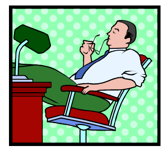
"So my Mortgage, my precious Mortgage stays?" Tears of joy streamed down his windows.

"Indeed she does House."

House and What's His Name embraced. Title Closer blew one last bubble and touched up her mascara.  Closing over.

CHAPTER EIGHT - ***THE BIG DAY***

It grew unusually dreary and windy as heavy rains swept across the front windows and into the narrow cellar stairs just alongside that led into a cold dark basement that nobody ever sees except to read the electric meters or to fix some waste pipe that always seems to leak at the worst times. The pizza guy darted across two puddles trying to escape in vain as the torrential downpour took its toll. Fanny May fought with her brand new umbrella just outside the front door but it wouldn't budge, stuck in lock mode.



4PM. What's His Name sat inside his cozy little office tapping his feet and waiting, waiting for the critical moment, that magic time, that ephemeral second when Original Bank's rep would arrive with all the documents relating to the Mortgage. You see today's not just any day, any ordinary run of the mill day. Today marks disbursement day, the day when Second Bank can finally disburse all funds because three business days passed since the closing and House didn't rescind. Can't disburse beforehand. That's what federal and state laws say.

Two knocks at the front door. A faint voice. A shrill perhaps. What's His Name peered out the side window but he couldn't see. All that rain blocked his view.

Yet something possessed him to open the front door anyway, turn the knob and pull it wide to see who's there, who would dare come out in these conditions and risk life and limb, so bold to venture into nature's fury and appear at his front door.

And there he stood in booties and rain hat. Manilla envelope in hand, damp but securely fastened.

"Oh yes, come right in." What's His Name recognized him immediately, it's that little old man from Original Bank who always delivers mortgage assignments and mortgage doc's on CEMA's.

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Little Old Man extended his right hand, all bony and brown spotted, veins protruding everywhere. He grunted as he slicked a few grey strands across his forehead. His attempt to say hello.

"Let's see …" What's His Name opened the envelope and emptied its contents onto the reception counter. "OK, we have an original mortgage and all the recording information checks out." What's His Name looked at his title report and shook his head up and down in a nod of approval. "And the original note, great, and yes indeed an endorsement without recourse to the order of Second Bank and it's signed." Little Old Man lightly shook his left foot hoping to drain some water but his sneaker seemed too saturated. "And yes the assignment of mortgage from Original Bank to New Bank with, let's see, the correct unpaid principal. Very good." What's His Name couldn't control his drool. Always happens when things go his way.

What's His Name handed Little Old Man a bank check to cover Original Bank's payoff plus a personal check for his fee. "See ya next time." What's His Name tapped Little Old Man on the shoulder to say job well done. Little Old Man coughed up flem and grunted, his way of saying goodbye.

"Closed and disbursed," What's His Name muttered to signify yet another resounding success, another notch on his belt.

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CHAPTER NINE - *LIFE IN THE AFTER LIFE*

And House's persistence did not go unrecognized in the world of New York real estate, particularly among those consumers who seek to refinance and to keep their costs down. "Talk to House," folks would say. "He's the guy." House became somewhat of a legend in his own mind and a renowned expert, truly a hero, perhaps a visionary.

So folks came from far and wide to pray for even a tidbit of his time, hoping he'd listen and spare a few priceless seconds to sprinkle his brilliance upon others less fortunate who endeavored to CEMA but couldn't quite get there. Lots of questions. Many answers. So many wanted him. Needed him. Indeed House's only problem was his physical lack of ability to touch as many as possible so House drafted his memoirs and called them CEMA Fever, a somewhat abbreviated way to talk about CEMA questions that often arise that nobody can answer. Nobody but House. Let's take a glimpse.

Non Borrowers in Title

Sometime you've got folks in title who did not apply for the loan and are not borrowers. Say for example, husband does the borrowing but husband and wife are both on the deed, in title together. Yes you can do CEMA's in this case. Husband and wife will both need to sign the CEM and any new mortgage, in addition to rescission notices, truth in lending statements or whatever else the new lender may require. The only catch involves wife's liability on the loan if she signs the CEMA. The standard CEMA form makes all signatories personally liable so you'll need to add language specifically saying wife's not personally liable or making the loan "nonrecourse" to her.

Borrowers Not in Title

It's not unusual, particularly for those in small businesses or the self employed who are concerned about lawsuits, to keep their name off the house. Leave title in wife's name only cause she's not involved in the business so she's less like to get sued. Yet if husband and wife apply for a loan they'll have to show husband's income. Otherwise, they won't qualify. Here CEMA's are doable but a few changes to the standard language are needed. Standard language says that both borrowers own the property. You'll need to adjust that to say which borrowers are not in title.

Different Names on Old Mortgages and Notes

What if you've got entirely different names on the old notes and mortgages because Borrowers assumed their seller's mortgage or took title subject to their seller's mortgage without actually making themselves personally responsible. Are CEMA's doable? Yes they are.

Original Notes Missing

Let's say your existing lender lost the original note or if the loan was transferred between banks, endorsements are missing or improperly done. Can you still do a CEMA? Sometimes, it depends, that's the answer. Legally, no problem. You can fix it. Lender wise, the answer varies. Some lenders will routinely accept what's called a "Lost Note Affidavit", that's a sworn statement saying they messed up and lost it. Others say absolutely not and they'll kibosh your CEMA. Potentially, if your note wasn't transferred and you've got a blank copy, you can simply re-sign the note, no harm done. That's not possible however if its missing endorsements since it's tough to mobilize lenders into re-creating endorsements. Occasionally doable but tough. If you can't re-create either notes or endorsements then it's best to see if your new lender will let you slide based upon the new doc's you'll sign at closing. Lenders always require a consolidated note, that's one key doc which re-affirms the entire debt. Many lenders will give you the green light providing they've got both consolidated note and lost note affidavit. Others say no, no way. In the final analysis, check with your lender.

Unrecorded Mortgages

Occasionally old mortgages don't show up in a search of the County Clerk's records. That's a problem cause you'll only get a credit against mortgage tax for what's recorded, not for something that didn't make the recorder's office. Recording issues arise for many reasons such as title company blundered or County Clerk rejected it for lack of legibility or language that's missing. So what to do. You can't do a CEMA but it won't matter. In fact, you'll do better money wise. If the old mortgage wasn't recorded then your old title company didn't disburse the mortgage tax that it collected at your old closing. Your next move? Contact your old title company and let them know you're refinancing and to apply your old mortgage tax against the new mortgage. Don't bother recording a mortgage that you're paying off. When all's said and done you'll end up getting credit for the full mortgage tax on original principal, not just mortgage tax on unpaid principal. And you'll get that free of any expenses you normally pay on CEMA's.

Original Mortgages, Old CEMA's or Prior Mortgage Assignments Missing

Almost never a problem when you're missing mortgages, old CEMA's or prior mortgage assignments. Mortgages, CEMA's and mortgage assignments are recorded in the County Clerk's office so you can always get certified copies for a small fee. Don't wait too long. Tell your title company well before the closing so you can avoid last minute scrambles. Lender's routinely accept certified copies in lieu of originals.

Allonges

It's an endorsement for a promissory note. Done on a separate page rather than the note itself. Lenders routinely do them and accept them.

Second Generation CEMA's and Progeny

Once you CEMA you can do it again, again and again so that your first CEMA may consolidate two mortgages, your second CEMA can consolidate

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three mortgages, then four, five and so on. That's why they say, CEMA me once, CEMA me twice. The question occasionally comes up, will lenders allow multi generation CEMA's or will they abstain after the first? The answer – usually yes, they'll allow them. Depends upon the lender. It gets more wordy and there's more room for error as you go on. That's why some lenders will only do it once or twice.

Consolidating Subordinate Mortgages

Generally not possible to consolidate equity lines or second mortgages and here's why. It's not a legal issue. New lenders won't disburse till they've got everything in place on mortgages they're taking by assignment. If you've got two lenders who need to deliver mortgage assignments and doc's, that means you'll need both lenders to appear at the same time and make delivery. Can't do one without the other. A risky proposition. Risky in the sense that if one lender doesn't show up and bring what's necessary, that blows the whole deal. And that's not unusual. Risky because it's unlikely that both lenders will handle everything to perfection and do it simultaneously.

Consolidating HELOC's

You can consolidate HELOC's despite the fact that principal always changes as folks pay some off and borrow more, then pay some off, but you generally can't do a CEMA if it's subordinate to another mortgage. Most lenders won't go for it. If that's the case, you can still CEMA the first mortgage.

Outgoing Lenders Who Refuse to Cooperate

Let's say your lender cops the anti social route and refuses to assign your mortgage or says sure, I'll do an assignment but I won't hand it to your new bank right away. First send the money and then instead of sending a satisfaction of mortgage, I'll send an assignment when I'm good and ready. Given this, can you still CEMA? Or does that forever destroy your carefully laid out plans? Answer. You generally can't CEMA unless old bank delivers doc's to new bank by hand and simultaneously exchanges doc's for money.

One suggestion if you're faced with an anti social lender, try getting new bank to visit old bank and do the exchange at their premises, kind of like a mambo in reverse, even if it's a hike. Well worth the extra fees and expenses if you're saving several times over.

New Bank Refuses to Take Old Mortgage By Assignment

What to do if your lender says sorry we don't CEMA, not something we'll do. We'll mambo, hoke poke, jitterbug, possibly even break dance but no CEMA's for us. Too complicated. Risky. Fattening. Unhealthy. Immoral? Everyone always gets it wrong cause nobody's ever read What's His Name's book from Carle Place. Can you force them to CEMA under some little known rule or regulation that spells trouble if they ignore you and make you pay all that horrific mortgage tax, that insidious closing cost that folks do somersaults to avoid. Though we'd like to offer something highly intellectual to persuade even the most stubborn of anti CEMA crusaders into a brand new renaissance, there's little you can do apart from threats to go elsewhere or actually moving your deal someplace else. You can't make lenders CEMA if they don't want to.

Outgoing Lender Fees

Can your outgoing lender whack you with assignment or other fees before they'll agree to assign your mortgage? Indeed they can. They often do. Both lenders and their attorneys get carried away with all kinds of extravagant fees that are not regulated under federal or state laws, at least arguably. Often, the more reputable and mainstream lenders will keep tabs on the feeding frenzy, because on the one hand it takes time and expense to pull files, draft papers, deliver them and process payments, but on the other hand, rudimentary principles of cost accounting frequently don't add up after taking into consideration an advance payment to initiate the request for an assignment and payments at disbursement for the balance, to both lender and attorney.

Extension Modification Agreements

Say you’re refinancing and you don’t want cash or you’re looking to pay the mortgage down. Can you still save mortgage tax and do a CEMA. Yes and no. You can save the mortgage tax but you’ll do an Extension Modification Agreement or “EMA”, not a Consolidation, Modification and Extension Agreement or “CEMA”. There’s nothing to consolidate. No “new money cause your loan amount doesn’t exceed your unpaid principal. No “new money” means no new mortgage to cover the “new money.” So, nothing to consolidate. You’ll extend and modify instead of consolidating, extending and modifying. A bit less expensive. No recording fee for a “new mortgage.” That saves about $200. No mortgage tax on the new money.

CEMA’s on Purchases

Yes you can. You really can. But a few glitches.

It’s a matter of looking to your seller’s mortgage and getting credit for mortgage tax actually paid by your seller. “Seller,” that’s the key word. You’ll need your seller’s cooperation from day one, from the moment you come to terms on the purchase and sale. It’s not what’s usually done in today’s market, at least not yet, so you’ll need to tap seller on the shoulder and say hey, I wanna buy your house or condo but I’ll only buy if you give me credit for the mortgage tax you paid. It won’t cost you a dime but I’ll need your help. Your cooperation. Your agreement to do a few more things under the purchase and sale contract, things you don’t ordinarily do.

Five easy steps. Simple stuff.

1. Get payoff letter on seller’s first mortgage showing unpaid principal.

2. Calculate preliminary credit for mortgage tax to see if it’s worth doing a CEMA or EMA. That’s covered in Chapter Four. Start out with tax rate times unpaid principal and subtract $1,000. If that number makes sense, go ahead, knock yourself out.

3. Include the appropriate language in your purchase and sale contract that provides, (a) consent for purchaser to contact seller’s lender and coordinate as to preparation of a mortgage assignment, (b) consent for

purchaser to receive from lender copies of all documents making up seller's mortgage, including the promissory note, mortgage, any assignments and all prior CEMA's or EMA's, (c) consent for purchaser to arrange for an assumption agreement with seller's lender, relieving lender of all liability on the mortgage once it's assigned, (d) an indemnity to seller that survives closing, for all liability under seller's mortgage after it's assumed, (e) purchaser's agreement to pay all costs relating to the assignment of seller's mortgage including some money up front just in case purchaser backs out and the lender holds seller responsible, and (f) a release of liability for purchaser just in case seller's lender doesn't follow instructions and fails to show at closing – for whatever reason.

4. Arrange with purchaser's new lender for a CEMA or EMA taking seller's mortgage by assignment. No doubt purchaser's new lender will want to review all doc's on seller's mortgage.

5. Arrange with seller's lender for an appearance at closing, to deliver all original doc's on seller's mortgage and to receive full payment.

Now, having said all this and the thousands you can save, what if your attorney or your real estate broker or anyone else says ahh … too complicated … fa get about it, takes too long and your lender won't go for it. What to do? Answer. Make sure you're covered in the contract and call our CEMA clearinghouse. We'll process everything like a black box. Reasonable fees apply but it's well worth it.

Mortgage Satisfactions Filed in Error

For those who CEMA'd once and want to mambo again you'll need to keep your mortgage live and breathing. Dead mortgages don't move. Pretty basic, right? You can't assign a dead mortgage from bank to bank cause the County Clerk won't record the dearly departed that passed into the spirit world. Kind of disgusting when you think about it. Who would even try assigning a mortgage that died?

Mortgages die when lenders file "satisfactions of mortgage" as they normally do when mortgages are paid off. Satisfactions end a mortgage's natural life. It's not a bad thing. Just a transition from mortgage on property to no mortgage on property.

When you assign mortgages from lender to lender, like you do for CEMA's or EMA's, the outgoing lender who's being paid off delivers an "assignment of mortgage" rather than a "satisfaction of mortgage" in order to keep the mortgage going.

Now, here's the dilemma. What if the lender who assigned it last time mistakenly filed a satisfaction showing the mortgage was paid off and ended. Terminated. Destroyed. Dead as a door nail. Can you undo what the old lender did wrong? Resuscitate. Bring back the dead? Can you file something with the County Clerk saying whoops, made a mistake, meant to just assign rather than satisfy, so please tear up that satisfaction, let our CEMA go forward without paying mortgage tax on the old mortgage again.

Most lenders will defer to title companies and most title companies will defer to the County Clerk. So when all's said and done you're at the County Clerk's mercy and that's ticklish at best. Some say yes and some say no. And some change their position from time to time, no solid policy. The bottom line then. If you get the issue, contact your county clerk and beg. Tap your feet three times and pray. And who knows, back in Kansas before you know it.

Negative Amortization

Negative amortization means the principal on your old mortgage gets bigger and fatter or it can get bigger and fatter as you make regular payments. These loans often limit the excess to ten percent beyond what you borrow.

Can you CEMA these loans too? Will lenders take fat mortgages or do they like their mortgages slim and trim, no bulges where they don't belong.

Lenders take them. It's personality that counts. They take them routinely.

Your credit for mortgage tax will depend upon the unpaid principal. Same as it does for regular mortgages without negative amortization.

Subordinating Mortgages

"Subordinating" means to take a mortgage and make it second in line to another mortgage. Now, our question. Can you CEMA and subordinate at the same time like walking and chewing gum or does one rule out the other.

Our answer. Yes you can. You can subordinate to whatever the CEMA covers so that everything your CEMA describes lies in first position and your subordination document will describe what comes behind the CEMA.

So, putting pen to paper, if you've got an equity line or second mortgage that you'd like to keep and you're looking to refinance the first mortgage, you can CEMA the first and subordinate your second mortgage without paying it off.

Cooperatives

CEMA's for cooperatives, can you do them? Do we care?

No you can't and it doesn't matter. No mortgage tax on cooperative loans so there's no point in saving what you don't owe.

Stupid Little Form

Some may say, why do a Watusi mating dance with all sorts of hieroglyphics when a stupid little form with a handful of lines would serve the same purpose. An exemption from mortgage tax on unpaid principal.

Good point. But it's the law.

GLOSSORY OF MORTGAGE TERMS

Assignment of Mortgage – Document which transfers a mortgage from one lender to another.

Assumption of Mortgage – Agreement which allows someone to assume responsibility for paying a mortgage loan.

CEMA – Stands for "Consolidation Extension Modification Agreement." It's an agreement which combines mortgages and changes the terms.

Contract of Sale and Purchase – Agreement where one or more parties agree to purchase and one or more parties agree to sell real estate.

Closing – As to a purchase and sale of real estate, the process where parties exchange property for money. As to a refinance of real estate, the process where parties execute a new mortgage loan in exchange for proceeds which are then used to either pay off an existing mortgage loan or otherwise disbursed.

Consolidation, Extension and Modification Agreement – An agreement which combines mortgages and changes the terms. "CEMA" for short.

Consolidated Mortgage – An exhibit to a consolidation modification extension agreement which reflects the full principal being borrowed and combines that into a new mortgage on new terms.

EMA – Stands for Extension Modification Agreement. An agreement which modifies the terms of an existing mortgage and either leaves principal the same or reduces it.

Extension Modification Agreement - An agreement which modifies the terms of an existing mortgage and either leaves principal the same or reduces it. "EMA" for short.

Mortgage – Document which ties a promissory note into real estate as collateral or security for repayment.

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Mortgagee – The owner of a mortgage or lender.

Mortgage Loan – Refers to the overall obligation under a mortgage and note.

Mortgage Tax – An excise tax for recording mortgages in the County Clerk's Office. Amount varies depending upon the County.

Mortgagor – The property owner who secures a promissory note against his property.

New Money – Under a consolidation extension modification agreement, any additional funds being borrowed over and above an existing mortgage loan.

Note - An obligation to repay an amount being borrowed. Same as promissory note.

Old Money - Under a consolidation extension modification agreement, the unpaid principal under existing mortgage loans.

Payoff Letter - A letter which lenders furnish showing the amount due under a mortgage loan and breaking that down into unpaid principal, interest through a date certain, and other charges such as late payment fees.

Promissory Note - An obligation to repay an amount being borrowed. Same as note.

Recording Fees – Fees charged by the County Clerk to record documents. The amounts vary by County.

Refinance – The process of replacing mortgage loans with other mortgage loans.

Section 255 Affidavit – An affidavit furnished to the County Clerk under Section 255 of the Tax Law in New York which allows for the recording of a mortgage without paying the full mortgage tax.

Title Closer – The representative of a title insurance company which appears at a closing for the purpose of issuing title insurance and satisfying all conditions which the title company requires.

Title Insurance Company – Insurance Company that issues title insurance in connection with mortgages or the ownership of real estate.

ABOUT THE AUTHOR

The author Kenneth B. Schwartz is a practicing attorney who maintains offices at 555 Westbury Avenue, Carle Place, N.Y. (Tel. 516-333-7020). After becoming a certified public accountant in 1980, Mr. Schwartz earned his JD in Law from St. John's University Law School in 1983, and a Masters in Tax Law from New York University in 1991. Mr. Schwartz now devotes his law practice to the representation of lending institutions in connection with mortgage closings.

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