

PREFACE: *The following information is posted for general information only and CCUOA does not warrant any of the statements contained therein. Please keep in mind that rules and requirements for loans change frequently and may differ from lender to lender. If you are considering a Cedar Creek Condo, it is strongly recommended that you conduct independent research, speak with your accountant, and be totally honest in all paperwork submitted to your lender, to avoid inadvertent errors that may constitute fraud.*

Is it a Primary Residence, a Second Home or Investment Property? (Some material was copied in part from: "The Mortgage Porter" by Rhonda Porter, which is available at www.themortgageporter.com, and other information can from various published sources, believed to be reliable.)

Every so often, someone will be interested in financing for a home they will not be living in 100% of the time...they want the best rate which is "owner occupied." It's crucial to know the difference. When applicants apply for a real estate loan, they have to complete the Uniform Retail Loan Application Form. The form has three boxes asking the borrowing to disclose the intended use of the loan for the purchase of the property.

The boxes are:

1. Primary Residence
2. Second/Vacation Home
3. Investment

Federal and state banking regulations consider the primary source of repayment for the loan and that is the reason these boxes are included on the form.

The primary source of repayment for a primary residence and/or a second/vacation home is the income from the borrowers (e.g., income from their employment). If the primary source of repayment is rental income or sale of the real estate, *it must be classified as an investment.*

If you plan to use the property a couple of weeks or a few times a year but intend to rent the property the remainder of the time, the box for "investment" should be checked and a borrower should disclose to the lending institution that he/she intends to rent the property; *this should not be considered as a second or vacation home.* If the borrower does not disclose an intent to rent the property and checks the box for purpose as "second/vacation home" to the lending institution, this constitutes mortgage fraud under federal and state banking regulations and the borrower can be prosecuted under existing federal and state law.

NOTE: *There are currently thousands of pending cases for prosecution under the above scenario, including properties in Montana and in the Big Sky area.* In addition, if the borrower **does disclose this information to the mortgage banker** or loan officer and the **banker** processing the application **tells the borrower to check the box for "second/vacation home"** because no one from the bank, Fannie or Freddie will follow-up on the actual use of the property by the borrower, *this also constitutes mortgage fraud and both the banker/loan officer and borrower can be prosecuted for mortgage fraud under existing law. And it goes*

beyond the banker and borrower: If a loan goes into default and an investigation shows that any person/entity either knowingly provided or allowed its agent to provide inaccurate information that a lender relied on in the granting of that loan can be prosecuted for bank fraud. The arm of the law reaches far and wide.

Principal/Primary Residence. When a property is classified as "owner occupied" it receives a better interest rate than an investment property. It's very straight forward:

- The owner lives in the property for a majority of the year.
- The property is in a location that makes sense in relation to their employment and contains characteristics that suits the needs of their immediate family.
- The borrower acknowledges (on several loan documents) they intend to occupy the property. Note: "intend" does not mean, "oops...I financed this believing I would live here and now I've decided to buy another property nearby that I'll occupy." Typically, the lender wants the buyer to occupy the property within 30 days of closing.

Second Home. A second or vacation home **must be a reasonable distance away from a principal residence.** Typically, lenders like to see a **minimum of 50 miles for distance from the borrower's home.** The owner must occupy the property for some portion of the year and the property must be suitable for year round occupancy. Second home definitions can vary from lender to lender. Some will insist that a second home be in a resort area. It's generally a little tougher to qualify for a second home--borrowers are often qualifying with mortgage payments on two properties: their primary and the proposed second mortgage.

Investment Property. This is a property that the borrower does not occupy or infrequently occupies. It can also be a "second home" or vacation home that is too close to a primary residence or that the underwriter is not convinced that it is indeed a vacation home. As there is a higher risk to banks with investment properties, the interest rate reflects the risk (the higher the loan-to-value, the higher the rate).

Discussion Points: A woman who currently owns a one bedroom/one bathroom condo finds a larger two bedroom unit and decides to purchase that unit and to rent out her one bedroom. Where this could potentially be classified as an "investment property," since the units are obviously closer than 50 miles to each other, it makes sense to the underwriter that she is changing her primary residence to the larger unit. As long as the buyer moves into the two bedroom unit within 30 days of closing, she qualifies for an owner-occupied loan on the two bedroom unit. If she were to refinance her one bedroom, it would be considered "non-owner occupied" investment property.

Another common scenario is where parents are helping their adult child (or other family member) buy a home. If that home is located too closely to the parents' home and they are buying it without their child being a co-signer, it may be treated as an investment property. However, if the property is for housing the child while in college or if the child is disabled, the borrower may qualify for an "owner occupied mortgage" rate with the Family Opportunity Mortgage. The [Family Opportunity Mortgage](#) does make exceptions with occupancy for family members who are buying homes for:

- Elderly Parents
- College-bound Child
- Disabled Adult Child

On a random basis, lenders [do post-closing investigations](#) to make sure that borrowers are actually residing in the property. If they find that the borrower is not, they may call the Note (mortgage) due...and that may be just the beginning of that person's troubles. Mortgage fraud is a very serious issue and [falsely stating that one intends to occupy a property tops the list](#). Knowingly providing false information on a loan application is a federal crime.

From [Fannie Mae and Freddie Mac's Uniform Deed of Trust](#):

Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control....

Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

Sometimes it may seem unclear as to what type of occupancy a property qualifies for. Borrowers simply need to be upfront with their Loan Originator when discussing the use and intentions of the property to make sure they do not commit mortgage fraud. **Although someone doesn't understand or misunderstands disclosure requirements, it not a defense to mortgage fraud.**

An attractive, well managed complex located within walking distance of the Big Sky Resort, Cedar Creek Condo Association has 72 units, housed in eight separate buildings. We are financially strong and the members of our board are seasoned professionals who are committed to making our complex a desirable place for you to call home. If you are interested in buying a Cedar Creek condo, please call your favorite real estate agent; if you would like more information about our complex, please click on "Contact Us" on the menu bar and send us an email. One of our board members will be happy to answer any questions you may have.