

NEXT-LEVEL THINKING ON EMPLOYEE HOME LOAN ASSISTANCE PROGRAMS

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“Unprecedented” leads all contestants for the title of most overused word in the English language over the past year or so. For employers who rely heavily on in-demand talent, the rise of remote and hybrid working environments combined with historically rapid appreciation in the cost of residential real estate makes the competitive landscape for the best and brightest, well, unprecedented.

The challenge facing many aspiring homeowners is that while they earn a sufficient salary to qualify for a purchase money mortgage loan, they have yet to accumulate sufficient cash reserves to make the necessary down payment.

More and more, we are seeing savvy employers developing home loan purchase assistance programs to help attract and retain high performing employees. These programs range from the typical “preferred lender” arrangements where the employer has arranged special, discounted loan pricing for its employees with a particular lender to more aggressive employee loan programs where the employer puts its employee in the position to make a cash offer on a home. An employee empowered to make a cash offer in this market is an employee that has been given an amazing benefit.

As these programs are developed employers will be well served to consider the implication of lending regulations in addition to the more readily apparent employment law considerations. Depending on how the program is structured, an employer may unwittingly become a “creditor” under federal consumer credit protection laws or find themselves engaging in business conduct that requires a state lending license.

Here are just a few key questions to

kickstart an analysis that has the goal of avoiding these unintended consequences:

1. Will this be a loan?
2. Will the loan be secured?
3. How will the loan be repaid?
4. Will the loan bear interest?
5. What happens if the employee separates?
6. Where does the employee live?
7. What is the source of funds for the loan?
8. How many employees will be eligible to participate in the program?
9. How do we properly document the transaction?
10. How will our program work in concert with other sources of home purchase financing?

To avoid unnecessary or unwanted compliance burdens, or worse, litigation and regulatory enforcement actions, an employer considering the development of an employee home loan purchase program should carefully consider these questions and how different answers can have profoundly different consequences.

Next-level thinking in the creation of employee home purchase assistance programs can distinguish employers competing in the marketplace for talented employees. While there are certainly complexities that must be resolved and pitfalls to be avoided, these are easily managed with the assistance of capable consumer finance and employment counsel.



Brett L. Foster recently joined Wright, Finlay & Zak as Of Counsel. For over 25 years, his practice has focused on the business and regulatory compliance issues

faced by banks, credit unions, and mortgage bankers. Foster has extensive experience advising clients on residential and commercial mortgage lending operations and licensing, payments, and vendor engagement across numerous financial services platforms. Prior to joining Wright, Finlay and Zak, Foster held positions as General Counsel of a regional bank and national mortgage loan servicer, Chief Compliance Officer for one of the country's largest retail consumer finance and wholesale mortgage lenders, and global lead counsel for credit services business process outsourcing of a Fortune Global 500 technology and consulting firm.



T. Robert Finlay is one of the three founding partners of Wright, Finlay & Zak. Since 1994, Finlay has focused his legal career on consumer finance and mortgage-related

litigation, compliance and regulatory matters. Finlay is at the forefront of the mortgage banking industry, handling all aspects of the ever-changing default servicing and mortgage banking litigation arena, including compliance issues for servicers, lenders, investors, title companies, and foreclosure trustees. Finlay successfully guides clients through the complexities of litigation while being extremely mindful of their core values and business models. He is a regular speaker, at industry events and for clients, on a variety of loan servicing and mortgage banking issues, including key legislative and legal updates.