# Ask the Real Estate Lawyer

*by Ilyce_Glink*

Q: My client has an existing $434,000 mortgage and wants to keep it. But she needs money for her renovation and wants to get a second mortgage of $300,000 to knock down the mortgaged property.She insists that this can be done, even though her first mortgage has a "due clause" should this happen. Do banks give this kind of permission? What secures the existing first mortgage?My client does not want to refinance and include the renovation costs in a $750,000 mortgage. She claims the property will be worth $1,250,000 when all the work is completed. Is there any other solution? A: Most residential mortgages require homeowners to keep their property in good condition and repair. Those same mortgages generally state that the homeowner must not damage or destroy the property. If your client demolishes her home, she'll likely be in default under the terms of her mortgage and the lender would have the right to accelerate repayment of the loan. In lay person's terms, her loan could be called.The lender would not trigger the "due on sale" clause but rather the default clause in the mortgage. Whether the lender would decide to call the loan or not is up to that lender and the specific circumstances. If the land is worth the same with or without the home, the lender might not object. If the land is worth substantially less without the home, the lender would object to the tear-down.The mortgage on your client's home is secured by the home and the land on which it sits. If your client fails to pay the mortgage, the lender can foreclose on the home and sell it, along with the parcel of land on which it sits.While lenders generally don't monitor the activities of their borrowers, your client does run the risk that the lender would call the loan if the lender finds out that the homeowner is about to demolish her home.How do mortgage lenders make decisions regarding such cases? Many factors go into the decision-making process.If your client's lender is based locally and has intimate knowledge of the community and property values, it is more likely to consent to the tear-down if it makes economic sense. However, if the lender is a large institutional servicer, it may be impossible for your client to get somebody to tell her it's OK. It would be up to your client to decide whether to take the risk.Let's assume she takes the risk, gets a second mortgage and tears down her house. Her primary lender might call the loan. If this happens, and your client has good credit, she might be able to refinance the loan quickly and pay off the first lender. She might even be able to keep the second lender by having that second lender consent to a new first loan on the home.A good local community lender or mortgage broker could explain other options.Q: Are front-end and back-end ratios important in determining loan-to-value ratio? If so, why?A: Each lender uses certain criteria to help determine how much money to lend to a borrower. The lender must decide how much a mortgage applicant can afford to borrow and what the applicant can afford to pay monthly toward housing expenses and other loan costs.Front-end-ratios are used to determine the difference between your gross monthly income and your monthly mortgage payment. The back-end-ratio is used to determine the difference between your gross monthly income and all of your debts, including the new mortgage loan.Both ratios are an integral part of the process when you apply for a home loan. If your income is high but so are your debts, your back-end-ratio will tell the lender that you have too much debt and won't be able to afford the loan payments.The front-end ratio tells the lender that based on the amount of your monthly income, the mortgage payments alone won't break you. If you don't qualify on the basis of your front-end ratio, you certainly won't qualify on the basis of your back-end-ratio.Both of these ratios only indirectly affect your loan-to-value ratio.Let's say you buy a home worth $100,000. If you borrow $80,000, your loan-to-value ratio is 80 percent. If your front-end or back-end ratios won't allow you to borrow that much because of other debt you carry, then the amount of money the lender will give you will decrease as well.(Samuel J. Tamkin is a Chicago-based real estate attorney. Ilyce R. Glink's latest book is 100 Questions Every First-Time Home Buyer Should Ask. If you have questions for them, write: Real Estate Matters Syndicate, PO Box 366, Glencoe, IL 60022 or contact them through Ilyce's website www.thinkglink.com)