

Colorado Real Estate: Staying “In Step” With the Military Market

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Fifteen years after President Reagan declared a “Peace Dividend” at the end of the Cold War, the financial impact is still rippling through the economy. As a result of recent decisions by the Base Realignment and Closure Commission (“BRAC”), Colorado will gain an estimated 14,000 Army and Air Force personnel over the next 5 years. According to the Colorado Springs Economic Development Corporation, the expansion for Fort Carson in Colorado Springs alone will add 13,000 military and civilian personnel plus 18,000 family members and dependents, providing an economic boost of approximately \$750,000,000 annually. Additionally, in the Denver area, Buckley AFB’s expanding space mission has added its own economic impact. An inevitable beneficiary of this combined revenue explosion will be the Colorado real estate market. This growth in spending will affect single-family homes, apartments, and vacant land on the residential side as well as other commercial real estate supporting the influx of service members and their families.

The key to understanding the implications of this coming surge in real estate spending by the federal sector and its employees hinges on recent developments in three very important pieces of federal legislation: the Military Housing Privatization Initiative, the Servicemembers Civil Relief Act, and the Veteran’s Administration Home Loan program. These programs can affect developers, landlords, lenders, brokers, and others who may provide real estate or related services to people in uniform and their families.

Housing Privatization

Recent initiatives by the Department of Defense (“DOD”) to “privatize” a large percentage of its government family housing will redress years of neglect and provide substantial opportunities for local real estate developers and property managers. Federal budget shortfalls and spending priorities resulted in a lack of new military family housing construction and poor maintenance of existing units. This in turn led to an increased reliance on the private housing sector. Frequently, that sector was unable to provide suitable housing at prices that service members could afford, or the location of military bases made development unattractive. The solution to this housing dilemma required legislative action, and in 1996 Congress intervened and passed the Military Housing Privatization Initiative as part of the 1996 Defense Authorization Act (the “Act”). The Act provides the DOD with the authority to sell or lease government property to private companies for the construction of new housing units, the renovation of older units or the demolition of substandard housing units. In addition, the Act

authorizes the DOD to build or lease military family housing on or near military installations through the private sector. The DOD may also sign long-term leases and property management contracts (up to 50 years) to help private companies amortize their investments.

The Act also adds powerful financial tools to empower private development. For example, direct federal investment, traditional loans, and loan guarantees are now permitted. These guarantees include a cushion in the event of base closure actions, force reductions or major deployments. The Act provides additional protection for the rental market, and permits the DOD to guarantee a specific occupancy level or rental income, or directly pay the difference between what a service member receives as a housing allowance and the prevailing market rates. The DOD is also allowed to pay a service member's housing allowance directly to the civilian housing contractor by allotment, providing a guaranteed cash flow.

The “bottom line” for Colorado and housing privatization is simple math: 2,664 housing units for Fort Carson (contract signed in 1999) and 351 housing units at Buckley AFB (contract signed in 2004). In addition, three other bases, Peterson AFB, Schriever AFB and the Air Force Academy will also be advertising for their own privatization programs in the near future involving a combined total of 2,321 units!

SCRA

Equally important to an understanding of the blossoming military housing market is the Servicemembers Civil Relief Act (the “SCRA”). Signed into law in 2003, the SCRA provided extensive revisions to the Soldiers and Sailors Civil Relief Act of 1940, and earlier legislation designed to protect the rights of service members and those called to active duty. Significantly, that protection has been expanded to include National Guard members in federal status or called up to respond to a national emergency.

Chief among the protections of the SCRA are safeguards against default judgments (including the appointment of an attorney to represent the interests of an absent service member), an automatic 90 day stay of civil court actions upon application, protections against involuntary evictions, and a statutory “military clause” allowing the termination of commercial and residential leases by military members permanently reassigned or deployed away from their base of assignment for 90 days or more. In this regard, the SCRA provides that a military member need not refund any lease concessions offered by a landlord as an incentive to sign a rental contract.

As sweeping as the protections of the SCRA may be, a landlord may petition a court for appropriate relief when the impact of the SCRA in a given situation is inequitable. In addition, it should be noted that the “military clause” protection of the SCRA is subject to waiver by the military member as long as it is executed in a separate writing from the lease agreement and after the service member has entered active duty (for those leases signed prior to entry upon active duty).

VA Home Loan Program

The United States Department of Veterans Affairs (“VA”) offers loan guarantees to qualified military-related personnel. This includes most veterans (during either peace time or time of conflict) but also certain active duty military personnel and some spouses. According to the VA, over 14 million veterans have used this program since World War II.

Under this program, private lenders, such as banks, savings and loan associations, or mortgage companies, and not the VA, make loans to eligible persons. The VA, however, guarantees a portion of the loan. The guaranty protects the lender in case the borrower does not repay the loan.

VA guaranteed loans are primarily used for purchasing a home, building a home, improving a home, refinancing a home loan, buying a manufactured home or lot, and to buy a townhome or condominium in a project approved by the VA. These loans are for one-to-four family units which are secured by a first mortgage or deed of trust encumbering the residence. Although the VA does not impose a maximum loan amount, there are limits imposed by the secondary mortgage market. As stated above, for townhomes and condominiums, prior approval of the project by the VA is necessary for the units to be eligible for VA guaranteed loans.

Another key component of the VA loan guaranty program is that the buyer normally does not need to come up with a large down payment. The loan maximum may be up to one hundred percent of the property value. As a result, this program encourages home ownership as it is easier for eligible military-related families to purchase a house a there is no need to have a large down payment. The VA obtains an appraisal of the house and no down payment is needed unless the purchase price exceeds the reasonable value of the house. There are also limitations on the amount of closing costs that can be imposed on the veteran.

Conclusion

Although many communities in the country will be feeling the negative effects of the BRAC process, in Colorado, and especially in Colorado Springs, the increase in the number of soldiers and their families will present many new opportunities for those providing the housing to accommodate them. Developers and others providing housing and related real estate need to be mindful, however, of the federal programs available and the requirements imposed, which relate to these military personnel.