

A Closer Look at

THE LAW



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Cunningham Dalman, P.C. is a full service law firm located in Holland, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

New Home Buyer's Tax Credit is Really an Interest-Free Loan

By: [Randall S. Schipper](#)
Attorney at Law

You may have heard of the housing rescue package recently adopted by Congress and signed into law, specifically how it provides first-time home buyers a tax credit worth up to \$7500. It sure can help—but be careful of those strings that are attached.

To qualify, one must close on the purchase of a house between April 9, 2008 and July 1, 2009, buy the house as a primary residence, not have owned a home in the past three years, and be a US citizen or resident alien. Those with a modified adjusted gross income of less than \$75,000 (or \$150,000 for married couples) qualify for the full credit. For those with a higher income, it phases out at \$95,000 (\$170,000 for married couples).

The home does not need to be a “new” home. It can be a detached house, an attached house (like half a duplex or a townhome), or an apartment condominium.

The credit is a refundable tax credit. This means that the person gets the full benefit of the \$7500 even if his or her income tax obligation is less than that. For most people, this means that their tax refund will be \$7500 higher. So far, good news. Now, this is not money the home buyer would have available at the time of closing, but it could replenish savings depleted to make a down payment, or to repay a personal loan taken to

make the down payment. If nothing else, it can help pay for the furnishings first time home buyers need to obtain.

Now for the not so good news: the gift comes with a payback obligation. *The credit is really an interest-free loan.* Beginning two years after the credit is claimed, the home buyer, now home owner, has to begin repaying the credit at the rate of \$500 each year. This payment would come out of any income tax refund otherwise due the home buyer. For the great majority of people who get a tax refund each year, the repayment should be fairly painless. If the home is sold before the loan has been fully repaid, it has to be paid out of the sales proceeds. If the “profit” on the sale exceeds the amount still due, the balance is forgiven. Also, the credit cannot be combined with certain similar state programs.

The credit can help those who qualify but it is not a government giveaway. Home builders and real estate agents who portray it as a gift or “free money” are not being honest. But it can save a home buyer several thousand dollars in interest payments. A word of caution: one buying a house should seek advice from a knowledgeable real estate attorney, an advisor not benefiting from the deal. This is especially true if there are any unusual conditions involved, such as the home being purchased out of foreclosure, new construction, or this tax credit.

FDIC Announces New Insurance Guidelines for Trust Accounts

By: [Jeffrey K. Helder](#)
Attorney at Law

As the financial markets and firms started to turn downward; we experienced a rise in calls from clients concerned about FDIC insurance rules. This article will attempt to explain some of the more normally encountered situations, as well as the new rules for trust accounts. On September 26, 2008 new interim regulations took effect which attempt to simplify the rule regarding FDIC insurance on trust accounts. In addition, on October 3, 2008 new legislation took effect which temporarily increases the maximum insurance limits to \$250,000 instead of \$100,000. Then on October 14, 2008 another temporary law went into effect which effectively insures everything without limit in a personal or business non-interest bearing transaction deposit account. Both of these temporary laws end on December 31, 2009. The rest

of this article will assume that we are discussing interest bearing accounts.

Basic rule 1: Each individual who has an account in their individual name is insured up to \$250,000. All accounts in that individual's name at the same bank (or branches of that bank) are aggregated for purposes of calculating the amount that is insured.

Basic rule 2: If an individual owns a joint account, and it is a Qualified Account, then the amount of insurance on the account will be up to \$250,000 for each of the joint owners. However, if a person has multiple joint accounts at one bank, even if they are with different people, all of that person's interests in the joint accounts will be aggregated. (Example: see the table below.)

Account holder	A	B	C	AMOUNT
Account #1	X (\$180,000)	X (\$180,000)		\$360,000
Account #2	X (\$140,000)		X (\$140,000)	\$280,000
Account #3	X (\$50,000)	X (\$50,000)	X (\$50,000)	\$150,000
INSURED AMT	\$250,000 OUT OF \$370,000	\$230,000 OUT OF \$230,000	\$190,000 OUT OF \$190,000	

To be a Qualified Joint Account:

- (i) All co-owners of the funds in the account are "natural persons"; and
- (ii) Each co-owner has personally signed a deposit account signature card; and
- (iii) Each co-owner possesses withdrawal rights on the same basis.

If a Joint Account is not Qualified, then each person's interest will be treated as if it's deposited in a single person account and aggregated with all other accounts in that person's name at that bank.

Trust accounts. It's important to realize that the regulations discuss three different types of accounts that they refer to as trust accounts.

First, the regulations discuss POD or Totten trust accounts. These are accounts that state that upon the owner's death, they should be Paid On Death (POD) to a designated beneficiary. Such accounts are insured up to the maximum insurance for each such beneficiary; however, each account beneficiary is only entitled to one maximum,

no matter how many different accounts that depositor might have named the beneficiary in. Previously the beneficiary must be a Qualified Beneficiary, which means a person's spouse, child/children, grandchild/grandchildren, parent/parents, brother/brothers or sister/sisters, however the new rules do not require the beneficiary to be Qualified. Example: A sets up an account at Bank, and designates POD to his four children. There will be a maximum of \$1,000,000 of insurance on that account. Note that A does not count himself in totaling up the maximum insurance.

The second type of trusts, are revocable living trusts which are the type typically prepared by estate planners for their clients in order to avoid probate and minimize taxes.

The new rules attempt to simplify the calculation of maximum insurance for any trust accounts under \$1,250,000. For such accounts, one receives the maximum per-beneficiary coverage for each beneficiary of the trust up to a maximum of five beneficiaries. This coverage applies regardless of the dollar value of that beneficiary's interest in the trust. So for example if a trust names a spouse as beneficiary, but gives \$50,000 to four different people, the trust would be entitled to \$1,250,000 of FDIC insurance. Living trusts that provide for a life-estate interest for designated beneficiaries and a remainder interest for other beneficiaries will be provided insurance coverage up to the \$250,000 limit per beneficiary. If the trust account is larger than \$1,250,000 or has more than six beneficiaries, then the maximum insured amount is the greater of \$1,250,000 or the amount equal to the value of each beneficiary's interest (capping each beneficiary at \$250,000).

So if we created a "Family trust" that had as its life-estate beneficiaries the spouse and all children, and grandchildren and then as remainder beneficiaries all the grandchildren, it seems that we could get the maximum insurance for each of the beneficiaries.

The third type of trust account is an irrevocable trust account. The rules for irrevocable trusts were previously much harsher than for revocable living trusts. The new interim regulations now provide the same rules will apply to irrevocable trusts. If a person's interest is contingent upon anything (even the discretionary actions of the trustee) that person's interest will still be counted. Thus a typical irrevocable trust will have as much insurance coverage as a revocable living trust. When a grantor of a revocable living trust dies, his or her trust becomes irrevocable, and the insurance coverage on the trusts accounts will most likely stay the same.

The FDIC has an excellent website, at which you can do further reading and even use their on-line calculator to estimate the amount of the insurance on your accounts. Let us know if you feel you need to have your situation analyzed.