**From:** Gini Pingenot <gpingenot@ccionline.org>
**Date:** January 24, 2022 at 8:23:52 AM MST
**To:** Dieter Raemdonck <dieter@rklawpc.com>
**Cc:** Katie First <kfirst@ccionline.org>
**Subject: follow up questions for Cole - STRs**

Hi Dieter,

Thank you again for adding such terrific substance to last week's STR conversation. I had a couple of follow up questions for Cole – would you be willing to pass them along?

1.) Can he point us to the IRS guidelines for principal/primary residence?

A few resources:

**The Rules Of Primary Residence (https://www.rocketmortgage.com/learn/primary-residence)**
If you own one home and live in it, it's going to be classified as your primary residence. But if you live in more than one home, the IRS determines your primary residence by:

- Where you spend the most time
- Your legal address listed for tax returns, with the USPS, on your driver's license, and on your voter registration card
- The home that is near where you work or bank, recreational clubs where you're a member, or other family members' homes

These are simple tests, but it can get more complicated for a homeowner who has more than one home.

I would consider the above statements, to be generally conforming to industry standards. Obviously, one can change their primary residence, and we would consider documenation as to why one may use a different address on a prior years tax return compared to what they state is their primary residence in the current year (some simple examples include, did they recently retire, are they able to work remotely, did they relocate for health reasons or for access to better healthcare, but this list in no way encompasses reasons that a lender would accept an address to be claimed as their primary residence for loan purposes)

**IRS: https: Residential rental property**

Residential rental property can include a single house, apartment, condominium, mobile home, vacation home or similar property. These properties are often referred to as dwellings. Taxpayers renting property can use more than one dwelling as a residence during the year.

A dwelling is considered a residence if it's used for personal purposes during the tax year for more than the greater of 14 days or 10 percent of the total days rented to others at a fair rental value. In general, personal use includes use of the property by:

- Any person who owns an interest in the property,
- A family member of any person who owns an interest in the property (unless it's the family member's principal residence and the owner receives fair rental value),
- Anyone who has an arrangement that lets the owner use some other dwelling or
- Anyone using the property at less than fair rental value.

Personal use doesn't include days of repair and maintenance, if the taxpayer is doing the repairs and maintenance on a largely full-time basis. Publication 527, Residential Rental Property (Including Rental of Vacation Homes) has more details about personal use.

**www.irs.gov/newsroom/know-the-tax-facts-about-renting-out-residential-property**

People often rent out their residential property as a source of income, particularly during the vacation-heavy, warm summer months. Different tax rules apply depending on if the taxpayer renting the property used the property as a residence at any time during the year. To help taxpayers avoid a sweat at tax time, the IRS wants taxpayers to know the facts about reporting rental income.


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**https://www.irs.gov/taxtopics/tc415**

**Rental Property / Personal Use**

If you rent a dwelling unit to others that you also use as a residence, limitations may apply to the rental expenses you can deduct. You're considered to use a dwelling unit as a residence if you use it for personal purposes during the tax year for a number of days that's more than the greater of:

1. 14 days, or
2. 10% of the total days you rent it to others at a fair rental price.

It's possible that you'll use more than one dwelling unit as a residence during the year. For example, if you live in your main home for 11 months, your home is a dwelling unit used as a residence. If you live in your vacation home for the other 30 days of the year, your vacation home is also a dwelling unit used as a residence unless you rent your vacation home to others at a fair rental value for 300 or more days during the year in this example.

A day of personal use of a dwelling unit is any day that the unit is used by:

- You or any other person who has an interest in it, unless you rent your interest to another owner as his or her main home and the other owner pays a fair rental price under a shared equity financing agreement
- A member of your family or of a family of any other person who has an interest in it, unless the family member uses it as his or her main home and pays a fair rental price
- Anyone under an agreement that lets you use some other dwelling unit
- Anyone at less than fair rental price

**Minimal Rental Use**

There's a special rule if you use a dwelling unit as a residence and rent it for fewer than 15 days. In this case, don't report any of the rental income and don't deduct any expenses as rental expenses.

**Dividing Expenses between Rental and Personal Use**

If you use the dwelling unit for both rental and personal purposes, you generally must divide your total expenses between the rental use and the personal use based on the number of days used for each purpose. You won't be able to deduct your rental expense in excess of the gross rental income limitation (your gross rental income less the rental portion of mortgage interest, real estate taxes, casualty losses, and rental expenses like realtors' fees and advertising costs). However, you may be able to carry forward some of these rental expenses to the next year, subject to the gross rental income limitation for that year. If you itemize your deductions on [Schedule A (Form 1040), Itemized Deductions], you may still be able to deduct your personal portion of mortgage interest, property taxes, casualty losses, and rental expenses from federally declared disasters on that schedule.

2.) Can he share the FHA's definition of second homes? He mentioned that the interest rate on those would be increasing so I was curious how 'second homes' are being defined.

**FHA SINGLE FAMILY HOUSING4000.1: FHA Single Family4000.1: FHA Single FamilyII. ORIGINATION THROUGH POST-CLOSING/ENDORSEMENTA. TITLE II INSURED1. Origination/Processing (09/14/15)b. General Mortgage Insurance**

## ii. Occupancy Types

### (A) Principal Residence

**(1) Definition**A Principal Residence refers to a dwelling where the Borrower maintains or will maintain their permanent place of abode, and which the Borrower typically occupies or will occupy for the majority of the calendar year. A person may have only one Principal Residence at any one time.

**(2) Standard**

**(a) FHA Requirement for Owner Occupancy**At least one Borrower must occupy the Property within 60 Days of signing the security instrument and intend to continue occupancy for at least one year. [203(k) Rehabilitation products] may have different requirements for the length of time to occupy the Property.

**(b) FHA-Insured Mortgages on Principal Residences**FHA will not insure more than one Property as a Principal Residence for any Borrower, except as noted below. FHA will not insure a Mortgage if it is determined that the transaction was designed to use FHA mortgage insurance as a vehicle for obtaining Investment Properties, even if the Property to be insured will be the only one owned using FHA mortgage insurance.Properties previously acquired as Investment Properties are not subject to these restrictions.

**(c) Exceptions to the FHA Policy Limiting the Number of Mortgages per Borrower**The table below describes the only circumstances in which a Borrower with an existing FHA-insured Mortgage for a Principal Residence may obtain an additional FHA-insured Mortgage on a new Principal Residence.

| Policy Exceptions | Eligibility Requirements |
|---|---|
| Relocation | A Borrower may be eligible to obtain another FHA-insured Mortgage without being required to sell an existing Property covered by an FHA-insured Mortgage if the Borrower is:<br>• relocating or has relocated for an employment-related reason; and<br>• establishing or has established a new Principal Residence in an area more than 100 miles from the Borrower's current Principal Residence.<br>If the Borrower moves back to the original area, the Borrower is not required to live in the original house and may obtain a new FHA-insured Mortgage on |

| | |
|---|---|
| | a new Principal Residence, provided the relocation meets the two requirements above. |
| Increase in family size | A Borrower may be eligible for another house with an FHA-insured Mortgage if the Borrower provides satisfactory evidence that:<br>• the Borrower has had an increase in legal dependents and the Property now fails to meet family needs; and<br>• the Loan-to-Value (LTV) ratio on the current Principal Residence is equal to or less than 75% or is paid down to that amount, based on the outstanding Mortgage balance and a current residential appraisal. |
| Vacating a jointly-owned Property | A Borrower may be eligible for another FHA-insured Mortgage if the Borrower is vacating (with no intent to return) the Principal Residence which will remain occupied by an existing co-Borrower. |
| Non-occupying co-Borrower | A non-occupying co-Borrower on an existing FHA-insured Mortgage may qualify for another FHA-insured Mortgage on a new Property to be their own Principal Residence.<br>A Borrower with an existing FHA-insured Mortgage on their own Principal Residence may qualify as a non-occupying co-Borrower on other FHA-insured Mortgages. |

**(3) Required Documentation**The Borrower must indicate on the *URLA* (Fannie Mae Form 1003/Freddie Mac Form 65) that the Property will be the Borrower's Principal Residence and certify to that fact on form HUD-92900-A, *HUD/VA Addendum to URLA*.

**(B) Secondary Residence**

**(1) Definition**Secondary Residence refers to a dwelling that a Borrower occupies in addition to their Principal Residence, but less than a majority of the calendar year. A Secondary Residence does not include a Vacation Home.

**(2) Standard**Secondary Residences are only permitted with written approval from the Jurisdictional HOC after a determination that:

- the Borrower has no other Secondary Residence;
- the Secondary Residence will not be a Vacation Home or be otherwise used primarily for recreational purposes;
- the commuting distance to the Borrower's workplace creates an undue hardship on the Borrower and there is no affordable rental housing meeting the Borrower's needs within 100 miles of the Borrower's workplace; and
- the maximum mortgage amount is 85 percent of the lesser of the appraised value or sales price.

**(3) Required Documentation**The Mortgagee must demonstrate the lack of affordable rental housing, and include:

- a satisfactory explanation of the need for a Secondary Residence and the lack of available rental housing; and
- written evidence from local real estate professionals who verify a lack of acceptable housing in the area.

**(C) Investment Property**

**(1) Definition**An Investment Property refers to a Property that is not occupied by the Borrower as a Principal or Secondary Residence.

**(2) Standard**Investment Properties are not eligible for FHA insurance.**Exception**Investment Properties are eligible if the borrower is a HUD-approved Nonprofit Borrower, or a state and local government agency, or an Instrumentality of Government.Investment Properties are eligible for insurance under the HUD Real Estate Owned (REO) Purchasing product, except under the 203(k) program.

And, if it's okay with Cole, I may share his responses to these questions broadly?

Thanks again Dieter

Gini

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