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2018 Western Regional Meeting
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HECMs in Sun City: Free Assumability in PUDs and HOAs

Moderator: Jim Milano, Weiner Brodsky Kider PC, Washington, DC

Presenters:

- Candra Adams, Liberty Home Equity Solutions, Rancho Cordova, CA
- Britany Luth, Finance of America Reverse, Tulsa, OK

Panel Agenda

- **Review of Legal Rules on Transfers Fees and Requirements for Free Assumability**
- **Business Interpretations, Reactions and Approaching Communities with Transfer Fees**
- **How Do Lenders Handle and Approach Communities with Transfers Fees?**
- **Any Solutions or Best Practices?**
 - **Any Workarounds?**
 - **Any Changes or Flexibility or other Approaches from the Communities?**
 - **Are Proprietary Products the Answer in the Interim?**

Brief History of 24 C.F.R. § 203.41

- **Legal Restriction on Conveyance (“Free Assumability Clause”):**
 - FHA-insured financing is not available for any property that is subject to a “legal restriction on conveyance”
- **Legal restrictions on conveyance are considered any provision in a legal instrument (e.g., lease, deed, sales contract) that attempts to cause a conveyance to be:**
 - Void or voidable by a third party;
 - The basis of a contractual liability of the mortgagor for breach of an agreement not to convey;
 - Terminated or subject to termination all or part of the interest held by the mortgagor in the mortgaged property if conveyance is attempted;
 - Subject to the consent of a third party;
 - Subject to limits on the amount of sales proceeds retainable by seller; or
 - Grounds for acceleration of the insured mortgage or increase in the interest rate

Brief History of 24 C.F.R. § 203.41 (Cont.)

- This provision applies to HECMs (24 C.F.R. §206.45(e))
 - The property must be freely marketable. Conveyance of the property may only be restricted as permitted under 24 CFR 203.41, except that a right of first refusal to purchase a unit in a condominium project is permitted if the right is held by the condominium association for the project.

What are Private Transfer Fees?

- A Private Transfer Fee (“PTF”) is a covenant that runs with the land, and requires the payment of a fee to another party upon sale of the subject property
 - These covenants are generally for the improvement/maintenance of shared facilities in a housing community, such as pools, golf courses, and community activity centers in retirement communities
 - Because the covenant runs with the land, it applies to all successive owners of the property as well

HUD's Historical View of PTFs in Association Documents

- Pre-HOTMA Reform, HUD's stance on PTFs was that PTFs are legal restrictions on conveyance due to the fact that they limit the amount of sales proceeds retainable by the seller
 - i.e., should a house subject to a PTF transfer to the lender through foreclosure or deed-in-lieu, the lender would have to pay the PTF, which violates the FHA's Free Assumability Clause
- Because FHA-insured financing is not available for any property that is subject to a legal restriction on conveyance, properties such as condominiums, homes in retirement communities, and other development communities that place liens of this type were not available for FHA insurance

Recent Developments

- H.R. 3700- the Housing Opportunity Through Modernization Act (“HOTMA”, or the Act) was enacted of July 2016.
- Section 301 of the Act, among other things, adds a new section (y)(3) to Section 203 of the National Housing Act.
- Provides existing standards of the Federal Housing Finance Agency (FHFA) relating to encumbrances under private transfer fee covenants shall apply to FHA insurance of condominium mortgage loans to the same extent and in the same manner that such standards apply to Fannie Mae and Freddie Mac.
- H.R. 3700 allows FHA-approved mortgagees to begin offering for insurance a mortgage loan on a condominium where the condominium is subject to a private transfer fee covenant, provided that the private transfer fee covenant otherwise meets the requirements established by FHFA.

Recent Developments, Cont'd

- HUD issued a statement in June of 2017, which indicated that FHA will insure condominium properties encumbered by a PTF covenant so long as the fee benefits residents in the area
- There has not been any movement on single-family homes

Discussion

- Business Interpretations, Reactions and Approach to Communities with Transfer Fees
- How do Lenders Handle and Approach Communities with Transfers Fees
- Any Solutions or Best Practices
 - Workarounds
 - Any Changes or Flexibility or other Approaches from the Communities?
 - Are Proprietary Products the Answer in the Interim in such Communities?



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Questions?