VA Lenders Handbook (VA Pamphlet 26-7), Chapter 9, Topic 1 — Security Instruments

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1. Security Instruments Change Date July 30, 2019 • This chapter has been revised in its entirety. a. Requirements Department of Veterans Affairs (VA) does not have a specific note or mortgage form that lenders must use for VA-guaranteed loans. VA regulations at 38 C.F.R. 36.4337 provide that security instruments used by a lender which are inconsistent with VA regulations in effect on the date the loan is closed will be considered amended and supplemented to conform to the regulations. Lenders must ensure that the security instruments they use: • establish the required lien • comply with the laws and regulations governing VA's home loan program • comply with applicable state laws, and • contain the following VA clauses: o assumption approval clause, o acceleration clause, o funding fee clause, o processing charge clause, and o indemnity liability assumption clause. b. Assumption Approval Clause The instruments evidencing the loan must read substantially as follows: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." The loan assumption notice must appear conspicuously on at least one of the security instruments for the loan. Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-3 1. Security Instruments, continued c. Other Clauses The mortgage or deed of trust must contain four additional clauses related to the assumption of the loan. VA does not specifically require that these clauses also be included in the note, unless this is required under state law to make them enforceable. Due to variations in local laws, the lender should obtain legal guidance as to any minor changes in these sample clauses which may be necessary to ensure that they have the effect required by the law and regulations; that is, the lender does not have to use the exact language provided for these four clauses. Acceleration Clause This loan may be declared immediately due and payable upon transfer of the property securing such loan to any transferee, unless the acceptability of the assumption of the loan is established pursuant to 38 U.SC. 3714. Funding Fee Clause A fee equal to one-half of one percent of the balance of this loan as of the date of transfer of the property shall be payable at the time of transfer to the loan holder or its authorized agent, as trustee for the VA. If the assumer fails to pay this fee at the time of transfer, the fee shall constitute an additional debt to that already secured by this instrument, shall bear interest at the rate herein provided, and at the option of the payee of the indebtedness hereby secured or any transferee thereof, shall be immediately due and payable. This fee is automatically waived if the assumer is exempt under the provisions of 38 U.S.C. 3729(c). Processing Charge Clause Upon application for approval to allow assumption of this loan, a processing fee may be charged by the loan holder or its authorized agent for determining the creditworthiness of the assumer and subsequently revising the holder's ownership records when an approved transfer is completed. The amount of this charge shall not exceed the maximum established by VA for a loan to which 38 U.S.C. 3714 applies. Indemnity Liability Assumption Clause If this obligation is assumed, then the assumer hereby agrees to assume all of the obligations of the Veteran under the terms of the instruments

creating and securing the loan. The assumer further agrees to indemnify VA to the extent of any claim payment arising from the guaranty or insurance of the indebtedness created by this instrument. VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-4

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