VA Lenders Handbook (VA Pamphlet 26-7), Chapter 9, Topic 3 — Title Limitations

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3. Title Limitations Change Date July 30, 2019 • This chapter has been revised in its entirety. a. Estate of the Veteran in the Property VA regulations at 38 C.F.R. 36.4354 provide the parameters for the required estate of a Veteran in real property securing a VA-guaranteed loan. The lender is responsible for ensuring the loan conforms to these parameters. For IRRRLs (see Chapter 6, Topic 6, Item k of this handbook). A beneficial interest in a revocable Family Living Trust that ensures that the Veteran, or Veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under state law. b. Estate Title Generally, title to the estate shall be that which is acceptable to informed buyers, title companies, and attorneys in the community in which the property is situated. c. Mortgage Note or Deed VA does not allow an individual to take title to a property if that individual is not on either the mortgage note or a mortgage deed of trust. Accordingly, if a spouse or other owner does not want to sign a mortgage note and be obligated for a VA-guaranteed home loan that individual must sign a mortgage deed of trust. d. Title Insurance VA does not require a lender making a VA loan or the Veteran-borrower to obtain title insurance. The lender may apply its own title insurance requirements to VA loan transactions. VA requires only that title to the property meet the standards described above in “Estate of the Veteran in the Property.” Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-6 3. Title Limitations, continued e. Restrictions on the Purchase or Resale of Properties Restrictions on the purchase or resale of the property are unacceptable to VA, with certain exceptions. The lender must: • ensure any restrictions fall within the exceptions provided by VA regulations at 38 C.F.R. 36.4308 and 38 C.F.R. 36.4354; • consult VA where doubt exists; • obtain VA approval where required; and • fully inform the Veteran and obtain his or her consent to the restrictions in writing at the time of loan application. f. Examples of Restrictions that Require VA Approval A lender may not accelerate a loan based on the sale of the secured property unless the acceptability of the assumption of the loan has not been established pursuant to Section 38 U.S.C. 3714, except that: • Under 38 C.F.R. 36.4309(b), VA may guarantee a loan made through a state, territorial, or local government program where restrictions in the legal instruments require acceleration of the loan if it is assumed by a party ineligible for assistance under the program. • Such acceleration must be mandated by federal, state, territorial, or local law or regulation. VA may guarantee a loan made through a state or local government program, designed to assist low-or moderate-income individuals, which imposes resale and price restrictions on purchasers. Under such a program, if the property is resold within a period established by local law or ordinance, certain restrictions as set forth in 38 C.F.R. 36.4354(b)(5)(iv)(A) on to whom the property may be sold, the resale price, and other restrictions approved by the Secretary may be applied. VA may guarantee a loan on which a title restriction limits the sale, lease, or occupancy of the dwelling to persons based on age, including a prohibition against the permanent occupancy of the dwelling by children, provided such restriction complies with applicable

federal law (38 U.S.C. 3704(c)). VA may refuse to approve a property with an age restriction if its operation would create an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of loan default. Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-7 3. Title Limitations, continued g. Examples of Restrictions That Do Not Require VA Approval Title to property involving reasonable encroachments, easements, servitudes, and reservations for water, timber, or subsurface rights, generally do not require VA approval. However, they must be taken into consideration in determining reasonable value. If any of these restrictions impact the basic livability of the property (meeting minimum property standards), VA approval is required. h. Effect of Title Limitations on Reasonable Value Title conditions or limitations must be shown on the NOV and considered by the appraiser in determining the reasonable value of the property. If the lender discovers, prior to loan closing, title conditions or limitations not shown on the NOV, the lender must have VA review the conditions and determine whether the value assigned to the property is materially affected. Without such a determination by VA, the lender risks a later finding that the condition or limitation affects the reasonable value of the property to the extent that: • the loan will be ineligible for guaranty, or • a claim on the guaranty will be subject to reduction under 38 C.F.R. 36.4325. VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-8

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