VA Lenders Handbook (VA Pamphlet 26-7), Chapter 9, Topic 9 — Lender Review of Sales Contracts on Proposed

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9. Lender Review of Sales Contracts on Proposed Construction Change Date July 30, 2019 • This chapter has been revised in its entirety. a. Procedures Prior to requesting an appraisal of proposed construction, the lender must review the sales contract or purchase agreement on the property. The lender must determine whether the contract: • is acceptable, and • does not contain unfair contractual provisions. b. Revisions The lender must request revisions of an unacceptable contract by the parties to the transaction. The lender should report unacceptable contract practices by a VA program participant (such as a builder) to VA if: • the program participant is engaged in practices which seriously prejudice the interests of Veterans or the Government, or • the program participant repeatedly uses unacceptable contracts or contracts containing unfair contractual provisions, and is uncooperative in changing such practices c. Closing The closing of the loan indicates that the lender has determined the contract is acceptable. d. Examples of Unfair Contract Provisions or Features Example Unfair Contract Provisions or Features 1 Provisions allowing the downpayment or earnest money of the purchaser to be forfeited or retained as liquidated damages if the purchaser cannot obtain VA financing. 2 Inclusion in a lump-sum contract of an “escalator clause” which obligates the purchaser to pay a higher price in the event of increased costs for labor, material, or other items prior to delivery of title unless accompanied by a proviso which gives the purchaser the option of canceling the contract and obtaining a refund of the moneys paid, if the increased price is not acceptable to the buyer/Veteran. Continued on next page VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-18 9. Lender Review of Sales Contracts on Proposed Construction, continued d. Examples of Unfair Contract Provisions or Features, continued 3 Provisions which infringe upon the usual or customary freedom or right of an owner to sell a property, except as allowed under 38 C.F.R. 36.4308(e) and 36.4354(b)(5). For example, a provision that the purchaser will give a stated real estate agency an exclusive listing if he or she resells the property within 2 years after acquisition, or will give the seller or another a first option to buy other than in a cooperative housing project or as provided in 38 C.F.R. 36.4354(b)(5). 4 A requirement that purchasers waive or release any claim or right for nonperformance by the builder under the contract. This does not prevent a builder from obtaining a statement from the purchaser at closing that he or she has inspected the house and has not observed any unsatisfactory construction, nor does it prevent the builder from obtaining a release from the purchaser in settlement of a bona fide dispute. 5 Omission of an accurate property description. 6 Omission of a provision specifying whether the builder or the Veteran is to be charged with any special assessments or improvement bonds. This includes those assessments or bonds which are payable in the future, for improvements included in the plans and specifications or commenced or completed at the time of closing, such as streets, sidewalks, curbs, gutters, and sewers. 7 Omission of a date for completion of proposed construction or failure to give the Veteran the option of canceling the contract and obtaining a refund of the

deposit if the dwelling is not completed on a specified date or within a reasonable time. 8 Failure of a contract covering proposed construction to obligate the seller to complete the dwelling in substantial accordance with identified and definite plans and specifications. VA Pamphlet 26-7, Revised Chapter 9: Legal Instruments, Liens, Escrows, and Related Issues 9-19

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