

VA Lenders Handbook (VA Pamphlet 26-7), Chapter 16, Topic 7 — Non-exclusive easement,(continued)

Register va-m26-7-ch16-t07

VA Lenders Handbook (VA Pamphlet 26-7), Chapter 16, Topic 7 — Non-exclusive easement,(continued).

1 verbatim provision(s). Each quote is a verified substring of the regulator-published source snapshot, not retyped.

VA Lenders Handbook (VA Pamphlet 26-7), Chapter 16, Topic 7 — Non-exclusive easement,(continued)

7. Non-exclusive easement,(continued) d. Right of the association, acting through the board of directors, without member, mortgagee and agency approvals unless provided otherwise in the declaration, to adopt regulations governing the use of common areas and the personal conduct of owners, occupants and guests thereon; e. Right of the association, acting through the board of directors, without member, mortgagee and agency approvals unless otherwise provided in the declaration, to charge reasonable admission or other fees for special or extraordinary uses of the common areas; f. Right of the association, acting through the board of directors, without member, mortgagee or agency approvals unless otherwise provided in the declaration, and consistent with existing local jurisdiction's zoning and subdivision ordinances, to transfer part of the common areas for the purpose of adjusting lot lines in accordance with reasonably stated provisions (i.e., does not reduce total open space area below zoning requirements, does not materially affect development plan on file with an agency, and all units previously adjacent to common areas - remain so located, unless the owners of the units approve the boundary line adjustment); g. Right of the board of directors without member, mortgagee or agency approvals unless otherwise provided in the declaration, to suspend the right of any member, and the rights of such member's household, tenants, guests and invitees to use recreational facilities or other common areas (to the extent that access and utility service are not impaired) for a period not to exceed 60 days, unless such rights are suspended for failure to pay assessments, in which case such rights may be suspended until the assessments are fully paid; or h. Special declarant rights reserved by the declarant, (i) such as: right to use portions of the common areas for sales and marketing purposes; (ii) reservation of easements across the common areas for development purposes; (iii) right to grant, terminate or vacate easements across common areas for limited purposes such as installation and maintenance of utilities, storm water management or provision of services to units. 8. Contains provisions for maintaining the common areas. If the association maintains areas it does not own (such as within a public right-of way for landscaping or signage or storm water management), the attorney must provide an explanation which describes the arrangement and discusses the rationale. Continued on next page January 1, 2001 16-B-17 16-B-18 January 1, 2001 VA Pamphlet 26-7, Revised Section B: Use of Attorney's Opinion Exhibit A: Other VA Requirements, Continued (A) Declaration (continued) 9. Contains provisions for the adoption of an annual operating budget and imposition and collection of assessments to meet the expenses of the association. The board of directors has the power on behalf of the association to levy both annual and additional assessments. a. Units of a similar nature, receiving similar services, are assessed on a uniform basis except for the reduced assessment permitted for unoccupied units owned by the declarant or a builder. If a different basis is used which allocates assessment liability among unit based on different services provided to the units or the different nature of the units, the rationale for that basis must be fully explained. b. If the declarant furnishes a multi-year feasibility

budget, the declarant and/or a builder may pay a reduced annual assessment on unoccupied lots only provided that such reduced assessment is not less than 25% of the full annual assessment. Alternatively, the declarant or builder may pay a one-time assessment equal to 25 percent of the applicable annual assessment per lot based upon the first year budget at maximum build-out (or 5 years out for projects involving 250 or more lots/units). The lots for which the one-time assessment has been paid may be exempt from further assessment until the earlier of: (i) initial occupancy or (ii) two fiscal years after submission to the declaration. If unoccupied units are receiving the benefit of the reduced or one-time assessment, the documents provide that the declarant, or builder(s) as appropriate, must provide for or pay for all maintenance to such units and shall fund all operating budget deficits incurred during the declarant control period, including reserves based upon expected lives of items for which reserved, but not including shortfalls caused by nonpayment of assessments by other members or extraordinary expenditures (e.g., expenses caused by natural catastrophes or environmental hazards). A unit initially occupied or conveyed to a unit owner other than the declarant or a builder is fully assessed. The obligation to fund budget deficits is a lien against all the land owned by the declarant (or the declarant and builders) in the planned unit development. Continued on next page January 1, 2001 16-B-18 January 1, 2001 16-B-19 VA Pamphlet 26-7, Revised Section B: Use of Attorney's Opinion Exhibit A: Other VA Requirements, Continued (A) Declaration (continued) 10. If a maximum annual assessment is stated, the maximum may increase automatically by the greater of ten percent or based upon a Consumer Price Index, such as the U.S. Department of Urban Price Index - All Urban Consumers (1982-84=100) or other comparable index reflecting the association's cost increase experience each year. The maximum may also be increased by a majority vote of the members obligated to pay such assessment or with the written approval of members entitled to cast a majority of the total number of authorized votes of members obligated to pay such assessment (in both cases excluding the declarant during the declarant control period). Increases in certain fixed costs for insurance, taxes, recycling or waste disposal may be passed through to the members, by permitting an automatic increase in the maximum assessment which reflects those increases. If no maximum assessment is set forth, a vote of the members must be required to approve capital expenditures, other than for repair and replacement, during a fiscal year of more than 20 percent of the budget for common expenses for that fiscal year. 11. Contains provisions for a lien-supported assessment. The assessment lien of any assessment levied by the association is subordinate to the lien of a first mortgage (Title 38, USC, section 3703(d)(3)). Subordination to other security interests or liens is acceptable if permitted by applicable law. The sale or transfer of any unit pursuant to mortgage foreclosure of a first mortgage or any proceeding in lieu thereof extinguishes the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer relieves such unit from liability for any assessments thereafter becoming due or from the lien thereof. (NOTE: VA will not recognize any limited priority that common expense assessments may have over the first mortgage lien. Mortgage holders should be aware that no VA claim payment will be made to holders for any payments they may have made to clear prior liens for delinquent and unpaid association assessments). Continued on next page January 1, 2001 16-B-19 16-B-20 January 1, 2001 VA Pamphlet 26-7, Revised Section B: Use of Attorney's Opinion Exhibit A: Other VA Requirements, Continued (A) Declaration (continued) 12. Contains provisions for collection of assessments. The interest rate permitted to be charged by the association is uniform, reasonable and non-usurious. The method of determining the interest rate is set forth. A rate not to exceed that charged by the Internal Revenue Service on delinquent taxes is considered reasonable. The association has the power

both to foreclose the association's lien and to bring a legal action against the member personally obligated to pay the assessment. The documents may provide that a successor in title is entitled to obtain an association disclosure statement or estoppel certificate with respect to common expense assessments, in which case an owner's personal obligation to pay assessments is assumed by successors in title unless the successor in title acquired title through foreclosure, or any proceeding in lieu thereof, of a first mortgage. (NOTE: Units which will be subject to a VA-guaranteed loan will not be subject to delinquent assessments in excess of 6 months in any case in which the association has not brought enforcement action against the current unit owner.) 13. Contains provisions for enforcement of the association documents. If owners are held liable for costs and expenses incurred by the association as a result of acts or omissions of such owner or such owner's tenants, agents, employees, invitees, guests and household members in failing to comply with the association documents or rules or regulations of the association, regardless of negligence or culpability, then the Public Offering Statement and or Information Brochure must describe this matter. 14. Contains provisions requiring appropriate types of insurance. The board of directors, on behalf of the association, has the authority to and is required to obtain coverages in the areas of property damage, liability, and personnel. Owners may be required to maintain certain types of insurance coverages and, if the owner fails to purchase that insurance, the board may obtain those coverages at the owner's expense. All hazard and flood insurance policies which include any units, must also have the standard mortgagee clause and provide for notice to the mortgagee at least ten days before lapse, material modification or cancellation of the policy. 15. Contains provisions for reconstruction of the common areas after condemnation or casualty loss. Continued on next page January 1, 2001 16-B-20 January 1, 2001 16-B-21 VA Pamphlet 26-7, Revised Section B: Use of Attorney's Opinion Exhibit A: Other VA Requirements, Continued (A) Declaration (continued) 16. Contains provisions governing parking, if parking is not included within each unit. If vehicular parking is on the common areas: (i) the association documents must: (a) permanently assign a parking space on the common area to each unit; (b) assign a specific parking area to a specific group of units or (c) make other provisions assuring parking in compliance with local ordinances; or (ii) the declarant must provide other evidence of parking in compliance with local ordinances. 17. Contains provisions guaranteeing mortgagees (may be limited to eligible mortgagees, as defined below) and agencies notice of amendments. During the declarant control period: (i) the declarant must provide a copy of all amendments to VA; and (ii) the association may not make any material amendments or take any extraordinary actions as described in subparagraph 6 above without the approval of VA. The declaration may provide that certain rights and protections (including notice and approval rights) are granted to only those mortgagees who have provided notice to the board of directors of their interest and requested all rights under the association documents "eligible mortgagees." Rights granted to eligible mortgagees should include the following: a. Right to inspect association documents and records on the same terms as the members; b. Notice of all material amendments to the association documents; c. Notice of any extraordinary actions of the association; d. Notice of any property loss, condemnation or eminent domain proceeding affecting the common areas resulting in losses greater than 10 percent of the annual budget or any unit insured by the association in which the mortgagee has an interest; e. Notice of any termination, lapse or material modification of an insurance policy held by the association; f. Notice of any default by an owner of a unit subject to a mortgage held by the eligible mortgagee in paying assessments or charges to the association which remains uncured for sixty consecutive days; Continued on next page January 1, 2001 16-B-21 16-B-22 January 1, 2001 VA Pamphlet 26-7, Revised Section B: Use of Attorney's

Opinion Exhibit A: Other VA Requirements, Continued (A) Declaration (continued)

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