Harrison Rue
Community Building and TOD Administrator
City and County of Honolulu
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May 5, 2017

Mr. Rue,

You asked me to summarize the current state of the secondary mortgage market with respect to financing products for buyers of homes with long-term or permanent resale price restrictions.

Affordable housing restrictions do create special lending needs and the programs need to be designed with appropriate care to ensure that the homes are easily financeable. It is not uncommon for new programs to struggle to support lenders in navigating unfamiliar program rules. However, I have worked with hundreds of local programs implementing these types of restrictions and I am not aware of any location where private lenders have ultimately been unable to finance eligible homebuyers because of the local affordable housing requirements.

Fannie Mae, Freddie Mac and FHA all finance deed restricted units with resale price restrictions.

Fannie Mae has the most clearly defined rules. I have attached a short summary of Fannie Mae's policy but the full details are contained in their Selling Guide section B5-5. In my experience, most communities have been able to find local lenders willing to originate to Fannie Mae's guidelines. In some cases, a community must make minor changes to their deed restrictions in order to meet the Fannie Mae guidelines. However, these changes generally don't require any change to important policy objectives or prevent the jurisdiction from ensuring long-term affordability. Fannie Mae, for example will allow restrictions that last any length of time (including permanent restrictions) and has no specific requirement regarding the amount of appreciation that sellers receive.

Freddie Mac does not currently have a formal set of rules that clearly identify the range of resale restrictions that they will accept but they have approved local programs on a case-by-case basis.

FHA's program is the hardest to work with and many commonly used deed restrictions don't work for FHA. FHA's rules, contained in Mortgagee Letter 94-2, require, among other things, that buyers receive at least 50% of any price appreciation and that any restrictions be terminated in the event of foreclosure. A number of cities have negotiated exceptions to the FHA rules so that their buyers can access FHA insured loans while the programs maintain long-term affordability. FHA has developed a draft mortgagee letter to allow more commonly used resale restrictions without requiring an exception but they have not issued it for reasons that are unclear to me. Most cities have been content to work with Fannie Mae and/or Freddie Mac and not found FHA worth pursuing.

Fannie Mae and Freddie Mac are both likely to announce plans to make financing for price-restricted homes even easier later this year. The 2008 HERA legislation created a 'duty to serve' underserved markets for both Enterprises. The final 'duty to serve' rule adopted by the Federal Housing Finance Agency (FHFA) identifies 'shared equity homeownership' as an underserved market. The Enterprises can receive 'duty to serve' credit for activities that they undertake that improve the availability of financing for buyers of homes with affordability restrictions that last 30 years or longer. Draft Duty-to-serve plans will be released later this month.

If you find that it would be helpful, I would be happy to introduce local lenders or developers to key staff at Fannie Mae, Freddie Mac or FHA with familiarity with these programs. I would also be happy to provide introductions to lenders active on the mainland who are successfully underwriting loans on homes with long-term price restrictions.

Sincerely,

Rick Jacobus
Principal
Street Level Advisors

Fannie Mae™

Resale Restrictions

To help address the high cost of housing in some markets, many governmental and nonprofit entities support the development of properties subject to resale restrictions. Those strategies help to create and preserve affordable housing stock in communities over the long term. Resale restrictions are a right in perpetuity or for a certain number of years, stated in the form of a restriction, easement, covenant, or condition in any deed, mortgage, ground lease, agreement, or other instrument executed by or on behalf of the owner of the land.

Resale restrictions may limit the use of all or part of the land to occupancy by persons or families of low- or moderate-income or on the basis of age (senior communities must comply with applicable laws).

Resale restrictions may also restrict the resale price of the property to ensure it is available to future low- and moderate-income borrowers. The restricted resale price provides a subsidy to the homeowner in an amount equal to the difference between the sales price and the market value of the property without resale restrictions.

Resale restrictions are binding on current and subsequent property owners and remain in effect until they are formally removed or modified or terminate in accordance with their terms, such as at a foreclosure sale or upon acceptance of a deed-in-lieu of foreclosure.

Lender Responsibilities

Lenders must review the terms and conditions of the affordable housing program, including any documents that describe the resale restrictions, such as termination or survival upon foreclosure.

When resale restrictions are documented by a second mortgage or deed of trust, the lender must ensure that the second mortgage or deed of trust complies with Fannie Mae's Community Seconds® guidelines. If the resale restrictions are included in a separate covenant or agreement instead of a second mortgage or deed of trust, they must comply, if applicable, with Fannie Mae's requirements related to shared appreciation in property value.

Underwriting Loans for Properties with Resale Restrictions

As detailed in the *Selling Guide,* Fannie Mae will purchase mortgages that are subject to one or more of the following types of resale restrictions (although some restrictions are likely to occur only in combination with others):

- income limits,
- age-related requirements (senior communities must comply with applicable laws),
- purchasers must be employed by the subsidy provider,
- principal residence requirements,
- first-time home buyer requirements as designated by the subsidy provider,
- properties that are group homes or that are principally used to serve disabled residents, and
- resale price limits.

For purchase transactions with resale restrictions that terminate upon foreclosure, the loan-to-value (LTV), combined LTV (CLTV), and home equity CLTV (HCLTV) ratio determination is based solely on the appraised value.

For purchase transactions with resale restrictions that survive foreclosure, the LTV, CLTV, and HCLTV ratios use the lesser of the sales price or the appraised value, which is the standard calculation method. Fannie Mae requires the standard calculation using the lower value because the presence of resale restrictions would limit the property's sale price in the event of foreclosure or acceptance of a deed-in-lieu of foreclosure.

> **NOTE:** *Desktop Underwriter® (DU®) has an "affordable LTV ratio determination" to make it easier for lenders to underwrite transactions for resale-restricted properties. Lenders can inform DU that the loan casefile will be underwritten using the resale-restricted feature by entering "Affordable LTV" in the Product Description field in the Additional Data section of the online loan application. When this indication is made, DU will determine the LTV, CLTV, and HCLTV ratios solely on the appraised value for purchase transactions, and not the lesser of the sales price or the appraised value. DU will then issue a message that specifies what lenders need to confirm when indicating the use of the resale-restricted feature.*

Resources

For more information refer to the Fannie Mae *Selling Guide* Section B5-5.3: Loans with resale restrictions or contact your Fannie Mae customer account team.

This summary is intended for reference only. All criteria are subject to the formal terms and conditions of the Fannie Mae Selling Guide *and* Servicing Guide*. In the event of any conflict with this document, the* Selling Guide *and/or* Servicing Guide *will govern.*