Fannie Mae

Selling Guide

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Guide Table of Contents

B5-5.3-03: Loans with Resale Restrictions: Underwriting and Collateral Considerations (07/28/2015)

This topic provides information on loans with resale restrictions, including:

Search guide content

BACK TO PART B

Underwriting Methods

Loans with resale restrictions may be underwritten manually or with DU. DU will issue a message that the lender must ensure that the loan meets all the requirements for properties with resale restrictions, including property type, amortization type, and loan purpose.

Calculation of LTV Ratios

When resale restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period), or the recordation of a deed-in-lieu of foreclosure, the sales price is typically not a reliable indicator of market value for the property. Accordingly, for these types of mortgages, Fannie Mae permits lenders the option to use the appraised value of the property without resale restrictions, rather than the lesser of sales price or appraised value with the restrictions in place, when calculating the LTV and CLTV ratios (and HCLTV ratio if applicable).

Fannie Mae is permitting this calculation based on the market value without resale restrictions because it is indicative of the actual value of the property in the event of a foreclosure or acceptance of a deed-in-lieu of foreclosure (disregarding factors that may affect value after origination and prior to foreclosure).

For loans underwritten with DU, the lender must enter "Affordable LTV" in the Product Description field in the Additional Data section on the online loan application. This will result in DU calculating the LTV, CLTV, and HCLTV ratios based solely on the appraised value for purchase transactions (and not the lesser of the sales price or appraised value).

When resale restrictions survive foreclosure or a deed-in-lieu of foreclosure and the resale restrictions limit the sales price of the property, the lender must use the lesser of the sales price or appraised value of the property with resale restrictions when calculating the LTV, CLTV, and HCLTV ratios, which is the standard method of calculation. Fannie Mae is requiring the standard calculation on the lower value due to the presence of resale restrictions, which would limit the property's sales price in the event of foreclosure or acceptance of a deed-in-lieu of foreclosure.

Allowable Resale Restrictions

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.

Duration of Resale Restrictions

Fannie Mae will purchase mortgages secured by properties subject to resale restrictions:

- when the restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period),
- upon the recordation of a deed-in-lieu of foreclosure, or
- when the resale restrictions survive foreclosure.

* There are no restrictions on the length of the period in which the resale restrictions may remain in place on the property.

RECEIVED AT AH MEETING ON 2/5/2020
From: Autumn Ness

If the resale restrictions survive foreclosure, the lender represents and warrants that the resale restrictions do not impair the servicer's ability to foreclose on the restricted property.

If the resale restrictions terminate at foreclosure, the subsidy provider is not entitled to obtain any proceeds from future sale(s) or transfer(s) of the property after foreclosure or acceptance of a deed-in-lieu of foreclosure.

If the resale restrictions survive foreclosure, the subsidy provider is not entitled to obtain any proceeds from the initial sale or transfer of the property after foreclosure, from the foreclosing mortgage holder who obtained the property at foreclosure or pursuant to a deed-in-lieu of foreclosure.

Resale Restriction Appraisal Requirements

In cases where the resale restrictions terminate automatically upon foreclosure (or the expiration of any applicable redemption period), or upon recordation of a deed-in-lieu of foreclosure, the appraisal should reflect the market value of the property without resale restrictions.

The lender must ensure that the borrower and appraiser are aware of the resale restrictions and should advise the appraiser that he or she must include the following statement in the appraisal report:

- "This appraisal is made on the basis of a hypothetical condition that the property rights being appraised are without resale and other restrictions that are terminated automatically upon the latter of foreclosure or the expiration of any applicable redemption period, or upon recordation of a deed-in-lieu of foreclosure."

In cases where the resale restrictions survive foreclosure or deed-in-lieu of foreclosure, the appraisal must reflect the impact the restrictions have on value and be supported by comparables with similar restrictions.

The appraisal report must note the existence of the resale restrictions and comment on any impact the resale restrictions have on the property's value and marketability.

Related Announcements

The table below provides references to the Announcements that have been issued that are related to this topic.

Announcements	Issue Date
Announcement SEL-2015-08	July 28, 2015

REALTORS®
Association of
Maui, Inc.

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Kahului, Maui, HI 96732-3507
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September 23, 2013

TESTIMONY

I am David DeLeon representing the Realtors Association of Maui. Providing housing our working class families can afford is one of our association's long-standing goals. Our members have backed that concern up with action, on the Maui Nui Affordable Housing Task Force and in the creation of Na Hale O Maui Community Land Trust.

The problem facing this committee is complex. The current policy found in MCC 2.96 tries to do a lot of things, probably too many things, without having a clear economic foundation. It does not take into account actual market conditions. It makes heavy demands on the developer, without offering incentives. Its demarcation between working class and high end housing is arbitrary. As a result, a total of three homes were sold under its auspices in six years.

We should go back to scratch and establish a true economic foundation for this policy. It is not enough to say: we want this. We also have to answer: will it work?

There is a lot to talk about, so let's start where we can agree: the inclusionary housing requirements in the existing policy are too high. A 50 percent requirement without any meaningful incentive simply will not work. And giving off-site projects preference to on-project inclusionary homes seems to run contrary to the whole idea of inclusionary zoning. So why not start there and get those numbers right first.

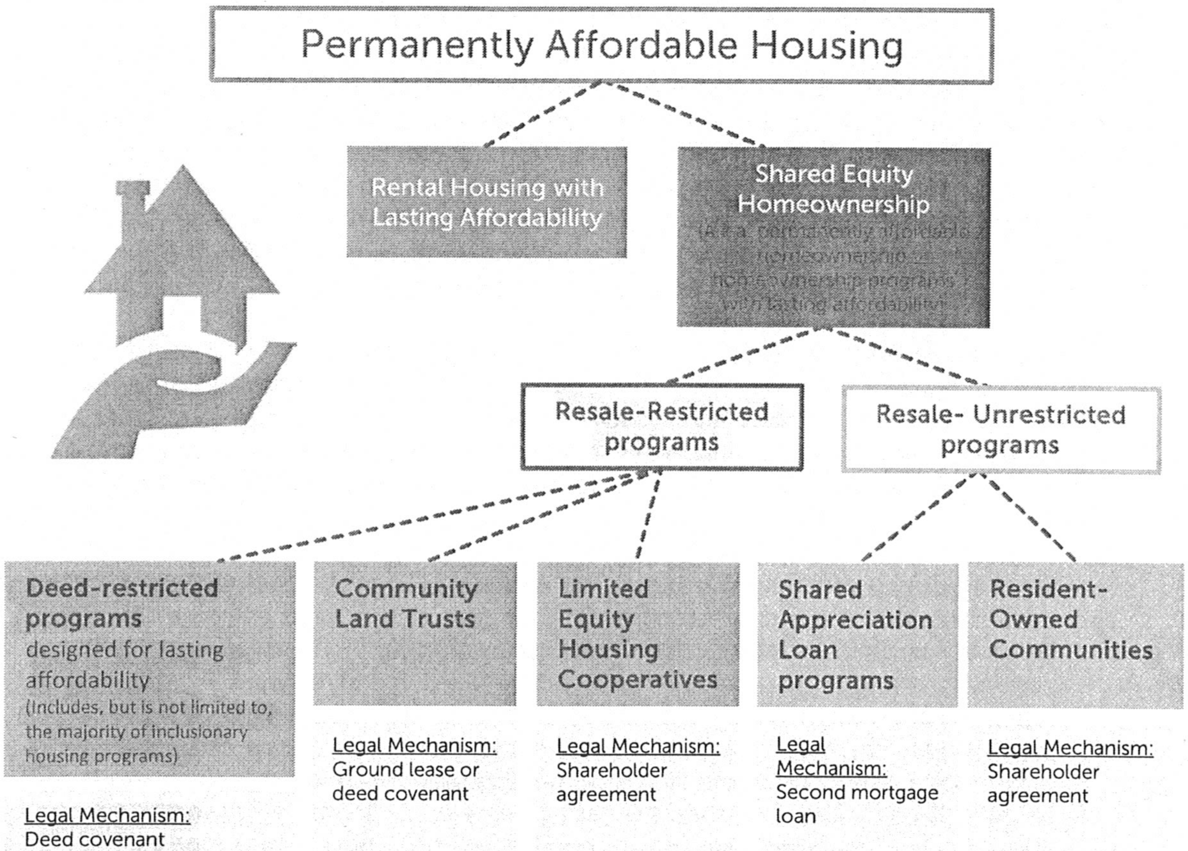
Incentives do work. Note the recent uptick in 100 percent affordable 201H projects. County policy guarantees water for 100 percent affordable projects. That's a very meaningful incentive to developers. 201H allows for a speedy review process, bypassing the usual entitlement morass. It is interesting that the projects we are now seeing are all 201H and none under the county's Workforce Housing policy. Because the County's policy lacks incentives, its inclusionary requirements should be reduced to something closer to 25 percent.

RAM is also hopefully that the County will move towards making homes built under its Workforce Housing policy permanently affordable, much like the Na Hale O Maui model provides for.

RAM recommends that the Committee just make basic adjustments for now and simultaneously start a serious study of this complex issue. The existing policy suffered from being long on good intentions and short on knowledge: of economics; of what models have worked across the country; of how market conditions affect functionality; and how serious incentives will attract investment and developers who want to build truly affordable housing here.

RECEIVED AT HHT MEETING ON SEP 23 2013

PERMANENTLY AFFORDABLE HOUSING:
Sector Chart & Glossary of Terms



Models & Submodels:

Permanently Affordable Housing (PAH): PAH refers to all types of housing with lasting affordability. These types include rental or homeownership units created by nonprofits (e.g. community land trusts (CLTs, CDCs), or public entities (e.g. inclusionary housing programs) that utilize various legal mechanisms to ensure the unit remains permanently affordable (hereinafter "PAH programs"). Differing from the shorter affordability periods required by federal programs to support the production of affordable housing, these organizations opt to maintain the affordability of housing over the long-term in order to *preserve* the affordable housing stock and the public's investment in affordable housing production.

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Rental Housing with Lasting Affordability: Some PAH programs preserve the lasting affordability of rental housing. To do so, organizations record a deed covenant on the rental property with a long-term affordability period. Some CLTs protect the ongoing affordability of rental units by also retaining ownership of the land under these rental unit(s).

Shared Equity Homeownership (SEH): SEH is an umbrella term for programs that provide homeownership units with lasting affordability. Sometimes, SEH providers are referred to as "permanently affordable homeownership programs" or homeownership programs with "lasting affordability" or "long-term affordability." SEH programs make a one-time investment to create a home that is affordable for purchase by a low- to moderate-income homebuyer. In return for purchasing a home at an affordable cost, the homeowners agree to limit their returns upon resale. In effect, homeowners "share" some of the proceeds from resale to pay the homeownership opportunity forward to the next low- or moderate-income household who buys the home.

Resale-Restricted programs: The majority of SEH programs are resale-restricted programs, meaning that they restrict the maximum price for which the home may be resold. Hence, low- to moderate-income buyers purchase and resell the homes at prices below fair market value in order to keep the home affordable. Resale restrictions are set forth in a legal contract between the homeowner and the SEH program.

Limited Equity Housing Cooperatives (LECs): LECs are traditionally stand-alone corporations that are owned collectively by low- to moderate-income residents. Beyond the initial subsidy to make the homes affordable, the corporation typically obtains financing through a blanket mortgage. Individual residents may or may not need to obtain an individual share loan in order to buy into the cooperative corporation. Through their incorporation documents, the cooperative declares its corporate purpose to be the provision of affordable housing to low- to moderate-income households. The shareholder agreement, signed by all residents, further stipulates and specifies resale restrictions. Many LECs have a "sponsor" or "steward," which is a government or nonprofit organization that assists residents to: 1) establish the cooperative and its legal documents, policies, and procedures; 2) secure development financing, permanent financing, and the initial subsidy to make the property affordable; and 3) provide ongoing support and monitoring for successful resident governance, property management, and affordability compliance. The largest steward of LECs is the Urban Homesteading Assistance Board, which serves LECs in New York City.

Community Land Trusts (CLTs): The traditional CLT model separates the title to the underlying land from the title to the improvements (i.e. built structures), although some states prohibit the legal separation of the land from the improvements. In a typical CLT, the community land trust retains ownership of the land and the homeowner owns and finances the purchase of the improvements. The homeowner is also given a leasehold interest in the land (and pays a nominal monthly fee to the CLT to lease the land), which is secured by a renewable ground lease that has a 50-99 year term, depending on state law. Additionally, the CLT may subsidize the property beyond the cost of the land to ensure the home is affordable for their targeted income levels. In effect, purchasing only the improvements allows homeownership to be affordable to low- to moderate-income households, as the household only needs to secure a mortgage loan for the affordable purchase price. The homeowner signs a ground lease (or sometimes, a deed covenant) to stipulate the resale restrictions.

Deed-restricted programs designed for last affordability (DR): Homeownership programs may utilize deed covenants to create lasting affordability (these programs are hereinafter "DR programs"). DR programs either directly (through funds) or indirectly (through inclusionary zoning requirements) subsidize the cost of a home to make the purchase price affordable for low- to- moderate-income homebuyers. Hence, the homeowner obtains a mortgage loan for the entire property, including both land and home, for an amount well below fair market value. The homeowner signs a deed covenant (also referred to as a "deed restriction" or "deed-restricted covenant") that stipulates resale restrictions. The vast majority of deed-restricted programs designed for lasting affordability are inclusionary housing programs (also referred to as "inclusionary zoning").

Resale-Unrestricted programs: Some SEH programs do not resale-restrict the price for which the home may be sold. Instead, these types of programs allow homeowners to sell homes at fair market value. In legal documents, they stipulate how a sale or transfer may take place to ensure the homes remain affordable for next low- to moderate-income buyer.

Shared Appreciation Loan Programs (SALs): Shared appreciation loan programs typically utilize a second mortgage loan that is for a 30-year term with 0% interest (or very low interest) and is due-upon-sale. In effect, this second mortgage loan operates as a "subsidy" to make the home affordable for low- to- moderate-income households. Differing from resale-restricted programs, the home is bought and sold for the fair market value. The nonprofit or public entity stipulates the share of the appreciation that goes to the homeowner and to the entity upon resale either in the second mortgage loan documents or an accompanying deed covenant. Receiving a portion of the appreciation allows the nonprofit or public entity to increase the amount the SAL that is provided to the next low- to-moderate-income buyer in order to keep pace with the market.

Resident-Owned Communities (ROCs): Manufactured housing is one of the dominant sources of affordable housing in the United States and is predominantly provided by the private market. While manufactured homes tend to be relatively affordable and often depreciate in value, the land under manufactured housing communities tends to increase in value and private lessors frequently escalate ground lease rents to unaffordable prices, rendering residency unaffordable. To combat this trend, some manufactured housing communities have organized (typically with the support of ROC-USA) to form resident-owned communities (ROCs) whereby resident controlled cooperatives purchase and retain ownership of the land while residents purchase and retain ownership of their manufactured homes. Residents may then join the cooperative by purchasing (and often financing) shares into the cooperative corporation. In order to do so, the residents sign a shareholder agreement. Ultimately, ROCs operate as a hybrid model whereby the cooperative ensures that shares and ground lease fees remain affordable to current and future residents; however, the manufactured housing remains resale-unrestricted, as manufactured homes by their nature tend to serve low- to- moderate-income households and remain affordable over time.

Legal Mechanisms for Shared Equity Homeownership Programs

Primary Legal Mechanisms:

A variety of legal mechanisms may be used to create shared equity homeownership (SEH) opportunities. These legal mechanisms, reviewed below, typically stipulate:

- Use and occupancy restrictions (e.g. primary residence requirements);
- Resale restrictions, including:
  - the definition of an eligible buyer (i.e. the program or an income-eligible, qualified buyer)
  - the resale formula that establishes a maximum resale price for resale-restricted programs or a shared appreciation formula for shared appreciation loan programs;
- Additional requirements (e.g. fees owed to the program, program approvals of financing or capital improvements).

Shareholder agreement: Shareholder agreements are typically utilized in limited equity housing cooperatives or resident-owned communities, whereby a resident purchases an affordable share into the corporation in order to become a "shareholder." In cooperatives, the corporation typically owns the land and the improvements (i.e. building or built structures) and the shareholder agreement gives the resident an ownership stake in the cooperative corporation and a long-term right to occupy their unit. Shareholders do not own real property, as in a condominium model. The shareholder agreement further stipulates the ongoing relationship between the cooperative and the shareholder, including, but not limited to, resale restrictions. In ROCs, the corporation typically owns only the land under which manufactured housing sits. Therefore, in an ROC's shareholder agreement, residents are responsible for purchasing and financing the manufactured home which is resale-unrestricted.

Deed covenant: Deed covenants (also called "deed restrictions") are the most common legal mechanism used by affordable housing programs (both rental and homeownership) to ensure compliance with federal or local program requirements. However, deed covenants may also be designed specifically to create SEH opportunities. The majority of condominiums that provide SEH opportunities utilize a deed covenant even if a CLT is involved. In most states, ground leasing under a condominium is not allowed since the land cannot be segmented and leased to individual homeowners. The vast majority of inclusionary housing programs utilize deed covenants to resale-restrict inclusionary homeownership units. Like conventional homeownership, homebuyers own the property and obtain mortgage financing. The difference with a deed restriction is that buyers are purchasing the property at an affordable purchase price rather than fair market value.

Notably, deed covenants designed for SEH sometimes only have 30-year terms. These short terms are due to state rules against perpetuities the allowable terms vary significantly by state. In these instances, affordability of homes is preserved by ensuring the SEH program has the preemptive option to purchase the home and may transfer this option to an eligible buyer. Additionally, deed-restricted programs designed for SEH also require every new homeowner sign a new deed covenant with a new term. That way, the affordable home is preserved and serves subsequent low-to-moderate-income homebuyers.

Ground lease: The vast majority of CLTs utilize renewable, 99-year ground leases to create SEH opportunities. The homeowner leases the land from the CLT for a nominal monthly ground lease fee while s/he owns and obtains mortgage financing for the improvements. Notably, sometimes the CLT provides additional subsidy beyond the fair market value of the land in order to make the home affordable for a low-to-moderate-income household. Even though ground lease durations are longer than most deed covenants, CLTs have a preemptive option to purchase the home or to transfer this option to an eligible buyer, and they also require every new homeowner sign a ground lease with a new term.

Shard appreciation loans: Second mortgage loans that share appreciation may be used to create SEH opportunities, although few programs currently utilize this legal mechanism. These types of SAL programs should not be confused with other "shared appreciation loans" available in the private market, which are profit-driven first mortgage loan products. SEH programs that utilize SALs design them to make homeownership significantly more affordable to low-to moderate-income buyers as well as to recoup the second mortgage and some portion of the appreciation so that a subsequent SAL can be made to subsequent low-to moderate-income purchaser of a property. Typically, the second mortgage loan has a 30-year term with 0% interest and is due-upon-sale. The nonprofit or public entity using SAL typically records a deed covenant stipulating the program's requirements and resale requirement along with loan documents. The SAL program retains the preemptive option to purchase the home or to transfer this option to an eligible buyer in order to keep the same home affordable to next buyer.

Supporting Legal Documents:

Notably, many SEH programs record additional legal documents to comply with their obligations under various funding sources, to establish additional protections to preserve the public's investment, or to promote positive homeownership outcomes. These supporting documents may vary by program type, program practice, and state laws.

Deed of trust: Almost all SEH programs record a deed of trust along with their primary legal mechanism. The deed of trust helps to ensure that the primary legal mechanism is not overlooked during title searches. A deed of trust frequently secures the owner's obligations and the financial investment in the property.

Letter of attorney's acknowledgement: Some SEH programs will require that a third-party attorney reviews all of the legal documents at home purchase with the homebuyer to ensure thorough and objective information was provided to the homebuyer to comprehend the transaction, ownership arrangement, and restrictions.

Riders on legal contracts: While many SEH programs have "model" or "baseline" legal contracts, it is common practice to add riders to ground leases, deed covenants, or other legal contracts. The Riders override some of the terms in the legal contracts. Sometimes these riders address requirements set forth by funding sources; however, oftentimes, they reflect changes required by mortgagees, Fannie Mae, etc. For instance, Fannie Mae has Form 2100, which is Fannie Mae's "Community Land Trust Ground Lease Rider."

Permitted mortgage agreement (PMA): Many lenders allow SEH programs to record a Permitted Mortgage Agreement, which delineates the obligations of each party (the homeowner, first mortgagee, and the SEH program). For instance, the PMA may provide the SEH program the right of first offer to purchase the home from the mortgagee if foreclosure occurs. The PMA may also require either the Mortgagee or the homeowner to provide copies of first mortgage lender or servicer notifications to the SEH program.

Third-party authorization: Oftentimes, the Mortgagee will ask a homeowner to sign a Third-Party Authorization so that the SEH program and Mortgagee or servicer may share information on home purchase or mortgage repayment.