

Section 16.7 - Sample Provision Excerpt (Public Preview)

leasing of lots; (viii) imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot; (ix) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insures or guarantors of first mortgages on lots;
C. An addition or

ISSUE #1



MARKUP #1 ->



MARKUP #1 · MORTGAGE WARRANTABILITY & RESERVE RISK

BOARD & COUNSEL REVIEW

Sec. 16.7 (p. 18): Right of First Refusal (ROFR) clause lacks mandatory exemptions for foreclosure, deeds in lieu of foreclosure, and FHA/GSE-insured mortgages.

Statutory / Legal Reference: Fannie Mae Selling Guide B4-2.1-03, Freddie Mac Guide Ch. 5701, & 24 C.F.R. § 203.43b (FHA / Agency Lending Guidelines)

Statutory Comparison: Under federal HUD/FHA regulations (24 C.F.R. §§ 203.41, 203.43b), VA regulations (38 C.F.R. § 36.4354), and Fannie Mae / Freddie Mac project eligibility standards, any Right of First Refusal in the governing documents renders the entire community non-warrantable for federal and conventional secondary-market mortgages unless it expressly exempts foreclosures, deeds-in-lieu of foreclosure, and...

CURRENT WORDING IN DOCUMENT:

leasing of lots; (viii) imposition of any right of first refusal or similar restriction on the right of a lot owner to sell, transfer, or otherwise convey his or her lot; (ix) any provisions which are for the express benefit of mortgage holders, eligible mortgage holders, or eligible insures or guarantors of first mortgages on lots; C. An addition or...

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Any Right of First Refusal reserved herein shall not apply to or impair the rights of any institutional First Mortgagee, nor shall it apply to any transfer or conveyance by foreclosure, deed in lieu of foreclosure, or subsequent sale by a First Mortgagee, Fannie Mae, Freddie Mac, FHA/HUD, or VA, in compliance with 24 C.F.R. §§ 203.41, 203.43b, 38 C.F.R.