

MARKUP #1 ->

shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by the tenant.

However, the tenant need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board’s request. All such payments made by the tenant shall reduce, by the same amount, the tenants obligation to make monthly rental payments to the Owner. If the tenant fails to comply with the Board’s request to pay assessments or other charges, the tenant shall pay to the Association all amounts authorized under the Declaration as if the tenant were an Owner.

The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments. for which he or she would otherwise be responsible.

(e) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association.

ISSUE #1

13. SALE OF LOTS.

A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

14. MAINTENANCE RESPONSIBILITY.

(a) Association’s Responsibility. The Association shall maintain and keep in good repair the Common Property. This maintenance shall include, without limitation, maintenance, repair, and replacement subject to any insurance then in effect, of all landscaping grass areas, paving and other improvements situated on the Common Property.

(b) Owner’s Responsibility. Except as provided in subparagraph (a) above, all maintenance of the Lot, any Structure and improvement on such Lot and any and landscaping located thereon shall be the responsibility of the Owner thereof, including but not limited to: (1) the repairing and painting (or other appropriate external care) of all Structures; (2) the seeding, watering and mowing of all lawns; (3) the pruning and trimming of all trees, hedges and shrubbery so that the same are not obstructive of a view by motorists or pedestrians of street traffic. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the

MARKUP #1 · FAIR HOUSING ACT (FHA) LIABILITY RISK

BOARD & COUNSEL REVIEW

Sec. 13 (p. 24): 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 mortgagee transfers, and complies with anti-discrimination mandates.

CURRENT WORDING IN DOCUMENT:

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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. § 36.4354, and Fannie Mae Selling Guide B4-2.1-03.