

ISSUE #1

MARKUP #1 ->

exercise its right of first refusal, the Co-Op shall obtain the credit report of the prospective purchaser(s) and conduct an interview of the prospective purchaser(s) with at least three (3) current Board of Trustee Members present. The Board of Trustees shall have sole discretion to determine whether to approve the prospective purchaser(s).

Upon the sale of the Membership Certificate, whether by the member on his own or by a sales agency, ~~the member shall be subject to a Capital Depreciation Assessment and Inspection and Transfer Fee of Three (3) percent of the sales price which is due and payable to the Co-op, and at the sole discretion of the Board, the Board may charge a nonrefundable membership fee to the purchaser which shall be assessed in an amount not to exceed nine (9) times the monthly carrying charge and which shall be payable to the Co-op at the time of closing. The division of such fees is to be made in accordance with the policy of the Board of Trustees existing at that time. The Capital Depreciation Assessment and the membership fee shall be dedicated to future repairs and improvements to the premises of the Co-Op and shall be segregated from other funds to the Co-Op.~~

The Board of Trustees suggests use of a sales agency that is familiar with the unique nature of cooperative ownership, the duties and responsibilities of its members, and the facilities available to members at Crestwood Village.

All sales shall be subject to and conditioned upon the following requirements:

- (1)

The prospective purchaser must receive a copy of the Co-Op Bylaws, Rules and Regulations and other information prescribed by the Co-Op and acknowledge his familiarity and acceptance of those provisions prior to signing a Sale-Purchase Agreement, and
- (2)

The Sale-Purchase Agreement must be on forms approved by the Board of Trustees of the Co-Op.
- (3)

Compliance with the above provisions is a prerequisite to the transfer of the Membership Certificate to the prospective purchaser.

(d) No Assignment or Subletting

There shall be no assignment of the Membership Certificate or subletting of the Proprietary Lease. It is deemed to be in the best interests of the Co-Op and its members to have the dwelling units owner occupied. Should a question arise as to whether a subletting has occurred, the interpretation of the event made by the Board of Trustees of the Co-Op shall be final.

(e) Default in Obligations of the Member

In the event the member shall default in any of his or her obligations, or breach any of the terms and conditions of these Bylaws, Proprietary Lease, Membership Certificate or Rules and Regulations established by the Board of Trustees, then and in such event, the Co-Op may, at its

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

BOARD & COUNSEL REVIEW

Sec. (e) (p. 5): 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:

and Transfer Fee of Three (3) percent of the sales price which is due and payable to the Co-op, and at the sole discretion of the Board, the Board may charge a nonrefundable membership fee to the purchaser which shall be assessed in an amount not to exceed nine (9) times the monthly carrying charge and which shall be payable to the Co-op at the time of closing.

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.