

§ 203.512

§ 203.512 Free assumability; exceptions.

(a) *Policy of free assumability with no restrictions.* A mortgagee shall not impose, agree to or enforce legal restrictions on conveyance, as defined in § 203.41(a)(3) of this part, or restrictions on assumption of the insured mortgage, unless specifically permitted by this part or contained in a junior lien granted to the mortgagee after settlement on the insured mortgage.

(b) *Credit review.* If approval is required by the mortgage, the mortgagee shall not approve the sale or other transfer of all or part of the mortgaged property, or the sale or transfer of a beneficial interest in a trust owning all or part of the property, whether or not any person acquires personal liability under the mortgage in connection with the sale or other transfer, unless:

(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by the Secretary;

(2) The selling mortgagor retains an ownership interest in the property; or

(3) The transfer is by devise or descent.

(c) *Investors and secondary residences.* The mortgagee shall not approve the sale of other transfer or mortgaged property to a person who cannot be approved as a substitute mortgagor as provided in § 203.258 of this part because the property will not be a primary residence or a secondary residence permitted by that section.

(d) *Due-on-sale clause.* Each mortgage shall contain a due-on-sale clause permitting acceleration, in a form prescribed by the Secretary. If a sale or other transfer occurs without mortgagee approval and a prohibition in paragraphs (b) or (c) of this section applies, a mortgagee shall enforce this section by requesting approval from the Secretary to accelerate the mortgage, provided that acceleration is permitted by applicable law. The mortgagee shall accelerate if approval is granted. This paragraph applies only if the application by the mortgagor on a form approved by the Secretary is dated on or after December 1, 1986.

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PAYMENTS, CHARGES AND ACCOUNTS

§ 203.550 Escrow accounts.

(a) It is the mortgagee's responsibility to make escrow disbursements before bills become delinquent. Mortgagees must establish controls to insure that bills payable from the escrow fund or the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for items payable from the escrow account must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. The mortgagee shall use the procedures set forth in § 3500.17 of this title, implementing Section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609), to compute the amount of the escrow, the methods of collection and accounting, and the payment of the bills for which the money has been escrowed.

(b) [Reserved]

(c) In the case of escrow accounts created for purposes of § 203.52 or § 234.64 of this chapter, mortgagees may estimate escrow requirements based on the best information available as to probable payments that will be required to be made from the account on a periodic basis throughout the period during which the account is maintained.

(d) The mortgagee shall not institute foreclosure when the only default of the mortgagor occupant is a present inability to pay a substantial escrow shortage, resulting from an adjustment pursuant to this section, in a lump sum.

(e) When the contract of mortgage insurance is terminated voluntarily or because of prepayment in full, sums in the escrow account to pay the mortgage insurance premiums shall be remitted to HUD with a form approved by the Secretary for reporting the voluntary termination of prepayment. Upon prepayment in full sums held in escrow for taxes and hazard insurance shall be released to the mortgagor promptly.

(Approved by the Office of Management and Budget under control number 2502-0474)

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