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## CHAPTER 4

### ASSUMPTIONS

**4-1 GENERAL.** All FHA insured mortgages are assumable. However, FHA has placed certain restrictions on the assumability of FHA-insured mortgages originated since 1986. Depending on the date of loan origination, a creditworthiness review of the assumptor by the lender may be required. Mortgages originated before December 1, 1986 generally contain no restrictions on assumability. To determine what restrictions to assumability have been placed on the mortgage, the lender must review the legal documents of the mortgage. Additional details regarding assumability are contained in HUD Handbook 4330.1 REV-5, "Administration of Insured Home Mortgages." Lenders should note that some mortgages executed in years 1986 through 1989 contain language that is not enforced due to later Congressional action. Mortgages from that period are now freely assumable, despite any restrictions stated in the mortgage.

**4-2 RESTRICTIONS OF THE HUD REFORM ACT OF 1989.** Mortgages closed on or after December 15, 1989 require credit qualification of those borrowers wishing to assume the mortgage. This policy applies to borrowers who take title to properties subject to the mortgage, without assuming personal liability for the debt. It also applies to borrowers who assume and agree to pay the mortgage. The creditworthiness review requirement spans the life of the mortgage. Assumptions without credit approval are grounds for acceleration of the mortgage, if permitted by applicable state law and subject to HUD approval, unless the seller retains an ownership interest in the property or the transfer is by devise or descent.

*In addition, private investors are prohibited from assuming insured mortgages that are subject to the restrictions of the 1989 Act. This restriction applies whether or not there is a release of liability by the lender of the selling mortgagor.*

**4-3 RELEASE FROM LIABILITY.** The lender completes a form HUD-92210, Request for Credit Approval of Substitute Mortgagor, or other similar form used by the lender. Execution of this form does not formally release the borrower from personal liability on the mortgage note.

The execution of form HUD-92210.1, Approval of Purchaser and Release of Seller, or other similar form used by the lender, constitutes a formal release of liability. Only the lender can execute the release of liability. The lender is required to release all parties from liability when the assuming borrower is found creditworthy.

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The following requirements apply:

- A. **Mortgages Subject to the 1989 Act.** Mortgages subject to the 1989 Act require that the lender automatically prepare the release from liability, thereby releasing the original owner when he or she sells by assumption to a creditworthy assumptor who executes an agreement to assume and to pay the mortgage debt, thus becoming the substitute borrower.

The due-on-sale clause generally is triggered when any owner is deleted from title, except when that party's interest is transferred by devise, descent, or in other circumstances in which the transfer cannot legally lead to exercise of the due-on-sale, such as a divorce in which the party remaining on title retains occupancy.

- B. **Mortgages Not Subject to the 1989 Act.** Mortgages executed before December 15, 1989 require that the lender honor all former owners' written requests to process a formal release from liability. Lenders must grant a release from liability if the assumptor is creditworthy and agrees to execute a statement agreeing to assume and to pay the mortgage debt.

- 4-4 **CREDITWORTHINESS REVIEW PROCESSING.** Creditworthiness of the assumptor is determined in accordance with standard mortgage credit analysis requirements by the lender that is the holder or servicer of the mortgage. The DE lender may also use an approved authorized agent to process assumptions. Assumption creditworthiness review processing must be completed within 45 days from the date the lender receives all necessary documents. Allowable fees for assumption processing are described in HUD Handbook 4330.1 REV-5, Chapter 4.

There are a number of servicing lenders that neither originate mortgages nor are approved under the DE program. In these situations, if the servicer is either a supervised or non-supervised financial institution, it may contract with a DE-approved lender to underwrite its credit qualifying assumptions. The DE underwriter must indicate his or her CHUMS identification number on the mortgage credit analysis worksheet. The fee is to be negotiated between servicer and DE lender. In addition, supervised lenders with a HUD-approved authorized agent relationship may have the agent underwrite its credit qualifying assumptions.

The following requirements apply:

- A. **Credit Review.** The lender reviews the assumptor's credit if the mortgage being assumed is held or serviced by a DE-approved lender.
- B. **Documentation Requirements.** Same as those described in Chapter 3 of this Handbook.

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- C. **Secondary Financing.** Secondary financing or other borrowed funds may be used by the assuming borrowers, provided the repayment terms are clearly defined and included in the underwriting analysis.
- D. **Seller Contributions.** Cash contributions from the seller in order to facilitate an assumption are not acceptable. The existing mortgage balance must be reduced by the amount of the contribution. However, the seller may pay the assumptor's normal closing costs (processing fee and credit report) with no reduction to the mortgage.
- E. **Assumptions by Other Legal Entities.** An assumption solely in the name of a corporation, partnership, sole proprietorship, trust, etc., is not acceptable if a creditworthiness review is required.

4-5 **LTV REDUCTION REQUIREMENTS.** Certain mortgages, depending on when originated, may require a reduction to the outstanding principal balance, when assumed by investors or as secondary residences.

- A. ***Investors.*** *When assuming mortgages not subject to the 1989 Act, originated by an owner-occupant pursuant to a VA Certifications of Reasonable Value (CRV) issued, or for which a DE underwriter signed an appraisal report on or after February 5, 1988, investors must pay down the outstanding mortgage balance to a 75 percent LTV ratio, if the owner-occupant requests a release of liability. Either the original or the current appraised value of the property may be used to determine compliance with the 75 percent LTV limitation. This requirement continues throughout the life of the mortgage.*
- B. **Owner-Occupants.** When assuming a property as a secondary residence, for which a VA CRV was issued, or for which a DE underwriter signed an appraisal report on or after February 5, 1988 (but before January 27, 1991), owner-occupants must pay down the outstanding mortgage balance to an 85 percent LTV ratio. Either the original appraised value or the current appraised value of the property may be used to determine compliance with the 85 percent LTV limitation.

Mortgages pursuant to a VA CRV, or a DE lender appraisal report or master appraisal report issued or signed on or after January 27, 1991, may not be assumed as secondary residences, except under the hardship provisions described in paragraph 1-3. (This does not apply to mortgages exempt from the investor prohibitions.)