

Section 1.16a – Resale/Deed Restrictions Guidelines

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Overview

Introduction

- A deed restriction is a rule affecting the future transferability of real property. A deed restriction is a form of a covenant affecting the property; meaning, they are contained in documents recorded in the appropriate land records, and will generally “run with the land” so as to bind all future owners of such property.
 - There are a variety of different deed restrictions that can be attached to a property, and commonly exist for purposes such as: providing affordable housing, limiting the pool of potential occupants (age, income, or occupancy type, etc.), or ensuring that the governing entity maintains control of the resale process.
 - Those deed restrictions specifically addressed in this document that reflect “Acceptable” are the only deed restrictions permitted by Truist.
 - Acceptable deed restrictions must not impair the lender’s ability to take interim title in the event of foreclosure or deed-in-lieu of foreclosure, or violate any Fair Lending or privacy laws.
 - The guidelines outlined in this document apply to all Truist non-Agency loan programs. For Agency loan programs guidance, see the “Properties with Resale Restrictions” topic outlined in [Section 2.01 Agency Loan Programs](#) of the *Correspondent Seller Guide*.
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Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- [2020](#)
- [2018](#)
- [2017](#)
- [2016](#)

Note: There were no bulletins published in 2019

Identification and Eligibility of Deed Restrictions

General

- The effective language creating a deed restriction exists in **recorded** documents, such as a Deed, or a Declaration of Covenants (sometimes referred to as a CCR (“Covenants, Conditions and Restrictions”), ECR (“Easements, Conditions and Restrictions”) or similar document).
- Any recorded document should be specifically referenced in the Title Commitment, in Schedule B – Section II.
- The restrictive covenants may be referenced in the deed, but most likely will not be fully described in this document.
- References to deed restrictions may be found in non-recorded documents such as an appraisal or a municipality’s affordable dwelling unit program guidelines. While these are useful in identifying recorded deed restrictions, non-recorded versions are **not sufficient** for purposes of Truist’s guidelines.
- The title company must provide affirmative coverage that any present or future violation of the restrictive covenants and conditions will not result in forfeiture or reversion of title. This is typically provided in an ALTA 9 Endorsement or its equivalent.

Reference: See the Closing Documentation topic subsequently provided in this document for additional guidance on title policy endorsement.

- The deed restriction **must not** impair or otherwise restrict Truist’s legal rights, in the event of a default (or cure thereof), foreclosure, deed-in-lieu of foreclosure or any other default measure.
- The declarations **must not** contain any provisions that would require the first mortgage holder to send a notice of default or foreclosure to any third party including the zoning authority or local jurisdiction (aka right to “cure” which is deemed a violation of federal privacy laws);

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Identification and Eligibility of Deed Restrictions, Continued

Affordable Housing

- Affordable Dwelling Units (ADU) or Moderately Priced Dwelling Units (MPDU) are properties where a deed restriction is imposed as a means of providing affordable housing.
- These restrictions may involve controls either on the sale price or controls on the borrower's income and MUST only affect the property for a set period of time.

Examples of language:

- *“These units are reserved as affordable home ownership units in accordance with the income limits set forth such that the eligible purchaser’s household income is 80% of the Area Median Income (“AMI”) as determined by the U.S. Department of Housing and Urban Development (“HUD”); or*
- *“During the “control period”, units must not be sold or the mortgage or deed of trust note refinanced for an amount in excess of the maximum sales price established in accordance with the County Code. The resale price calculation for the units will be made in accordance with the change in the cost of living as measured by the Consumer Price Index for this MSA as published by the U.S Department of Labor.”*
- ADUs are acceptable when they meet program-specific first mortgage guidelines subsequently presented in this document, *and* all of the following requirements:
 - The source of the restrictive covenant is available in the public land records;
 - The restrictive covenant is administered by an authorized governmental entity with procedures for screening and processing applicants;
 - Restricted units must have effective resale controls for a fixed period of time;
 - The declarations MUST NOT contain any provisions that would require the first mortgage holder to send a notice of default or foreclosure to any third party including the zoning authority or local jurisdiction (aka right to “cure” which is deemed a violation of federal privacy laws); and
 - The terms of any deed restrictions provide that the lender (its successors and/or assigns) is exempt from any binding effect in the event the lender takes interim title by foreclosure, deed-in-lieu of foreclosure, or other default measure.
 - The number or percentage of restricted units in the subdivision or project must not exceed 30% of the total number of units.
 - Properties located in a Condominium project, the presale requirements are applied separately to the restricted units and the non-restricted units.

Note: If the subject property is located in a PUD or community which offers affordable dwelling units , but documentation indicates that is it not an affordable dwelling unit (i.e., is not bound by the ADU restrictions), then the above guidelines do not apply.

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Other Types of Deed Restrictions

General

- In some cases, there may be more than one deed restriction found in the recorded documents; that is, if the property is an ADU, there may also be other deed restrictions in place.
 - ALL deed restrictions present must be acceptable in order to be eligible for closing.
 - Examples of other common deed restrictions include, but are not limited to, these outlined in this topic.
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Recapture Fee (aka Shared Equity or Shared Appreciation)

- Recapture Fee (aka share equity or shared appreciation) provides for a municipality or locality to collect a one-time fee from the owner in order to continue providing affordable housing in the community.

Example of language:

“For the first sale of the unit after the expiration of the resale control period, the owner must make a payment to the Authority in the amount of fifty percent (50%) of the net sales proceeds.”

- Acceptable when it meets program-specific first mortgage guidelines subsequently presented in this document and affects only a percentage of the net proceeds.
 - Recapture fees are acceptable only when it affects a percentage of the net proceeds and calculated as a percentage of the net proceeds from the sale of the property.
 - They are not acceptable when the recapture fees are a percentage of the entire sales price.
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Other Types of Deed Restrictions, Continued

Properties with Private Transfer Fee Covenants

- In accordance with a regulation issued by the Federal Housing Finance Agency on March 16, 2012, and codified at 12 CFR Part 1228 (the “Private Transfer Fee Regulation”), Truist will not originate mortgages on properties encumbered by private transfer fee covenants, regardless of whether those covenants were created on or after February 8, 2011, unless permitted by the Private Transfer Fee Regulation.

Note: The Private Transfer Fee Regulation excludes private transfer fees paid to homeowner associations, condominiums, cooperatives, and certain tax-exempt organizations that use private transfer fee proceeds to benefit the property. Fees that do not directly benefit the property are subject to the rule, and would disqualify mortgage from being used as collateral for Federal Home Loan Bank advances.

Age Restriction

- An Age Restricted Community is an age-related restriction imposed by a builder, developer, homeowner’s association, or an authorized government entity.

Example of Language:

“The units are intended for the housing of persons 55 years of age and older and are intended to be consistent with and are set forth in order to comply with the Fair Housing Act.”

Acceptable when it meets program-specific first mortgage guidelines subsequently presented in this document and this type of development or condominium project is common and typical for the market area (as noted on the appraisal).

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Other Types of Deed Restrictions, Continued

Purchase Option or Right of First Offer (Right of First Refusal)

- Purchase Option or Right of First Offer (Right of First Refusal) requires that the owner must offer any transfer of title exclusively through the governing locality or housing agency, or other third party, including the prior transfer or HOA.

Example of language:

“No unit owner may convey, sell, lease, give, encumber, or transfer title to a unit owner by him, except as otherwise herein provided, without the approval of the Board of Directors of the Association. The Association reserves the right of first refusal on any such proposed sale, transfer, or encumbrance and shall be given thirty (30) days’ written notice in which to make its election”

- **Acceptable** when it meets program-specific first mortgage guidelines subsequently presented in this document, **and** the terms of the restriction provide that the lender (its successors and/or assigns) is exempt from any binding effect in the event the lender takes interim title by foreclosure, deed-in-lieu of foreclosure, or other default measure.
- The holder of the right of first refusal (jurisdiction or governing authority) must exercise its rights to purchase the property within ninety-(90) days of the notification of the intent to sell.

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Other Types of Deed Restrictions, Continued

Principal Occupancy

- Principal Occupancy provides that any owner/transferee must occupy the property as their principal residence and must not rent, lease or permit exclusive occupancy to any other party.

Example of language:

“During the control period, the owner must occupy the home. The unit may not be rented out.”

- **Acceptable** when it meets program-specific first mortgage guidelines subsequently presented in this document, and the terms of the restriction provide that the lender (its successors and/or assigns) is exempt from any binding effect in the event the lender takes interim title by foreclosure, deed-in-lieu of foreclosure, or other default measure.
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Third Party Notification and Right to cure

- This deed restriction involves a requirement for the lender to provide notification to the governing authority of any delinquency or default.

Example of language:

“During the control period, all lenders or other parties who have or may seek to place a lien on any of the units shall provide to the County, or their successors, written notice of any delinquency or default under any mortgage, deed of trust, or other instrument or agreement that may permit a lien to be filed against any of the units, and shall offer the County at least sixty (60) days in which to cure any such delinquency or default (“Right to Cure”)”

- **Not acceptable** – this restriction violates privacy laws.
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Community Land Trust Ground Lease

- The ground lease includes provisions that require the continued use of the property for low-income and moderate income housing. These are a form of shared equity or shared appreciation.
 - Restrictive language is similar to an Affordable or Moderately Priced dwelling, by restricting the sales price or the borrower’s income.
 - **Not Acceptable** – Truist does not permit Community Land Trust properties.
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Program Guidelines

Conventional Agency Loan Program Guidelines

Reference: See the “Properties with Resale Restrictions” topic outlined in [Section 2.01 Agency Loan Programs](#) of the *Correspondent Seller Guide* for guidelines.

Conventional Non-Agency Loan Program Guidelines

- The following guidelines apply to all Truist conventional Non-Agency loan programs. These guidelines are *in addition to* any specific conventional loan program guidelines located under the Products tab in the *Correspondent Seller Guide* and apply to any property subject to deed restrictions:
 - Primary residence
 - Second homes
 - 1-2 units only (includes Condominiums and PUDs)
 - Fixed rate and ARMs
 - Ineligible properties:
 - Investment Properties
 - 3-4 units
 - Properties that are group homes or that are principally used to serve disabled residents
 - Documentation in the loan file must indicate that the borrower and appraiser are aware that the property is subject to deed restrictions, such as the sales contract and appraisal.
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FHA Loan Program

Reference: See Section 2.22 FHA 203(b) Loan Program for additional guidance on resale/deed restriction requirements.

Appraisal Requirements

Appraisal Guidelines

- A full appraisal is required on properties subject to affordable dwelling or Moderately Priced Dwelling covenants.
 - The appraiser must note on the appraisal report the existence of the deed restrictions and comment on any impact the deed restrictions have on the property's value and marketability.
 - The appraisal report must include at least three comparables with similar deed restrictions, including similar percentage of restricted properties within the project or subdivision.
 - For properties in PUDs or Condominium projects, two of the comparables must be independent of control of the subject property's developer
 - **IF the deed restrictions** terminate or cease to exist automatically at the time the lender takes title under foreclosure or upon recordation of a deed-in-lieu of foreclosure, **THEN appraisal must reflect:**
 - The market value of the property without consideration for the deed restrictions.
 - The following must be included in the appraisal report:
 - *This appraisal is made on the basis of a hypothetical condition that the property rights being appraised are without resale and other restrictions that are terminated automatically upon the latter of foreclosure or the expiration of any applicable redemption period or upon recordation of a deed-in-lieu of foreclosure.*
 - **IF the deed restrictions** survive foreclosure or deed-in-lieu of foreclosure (meaning the restrictions will continue after foreclosure to the next owner), **THEN appraisal must reflect:**
 - The impact that the deed restrictions have on value and be supported by comparables with similar deed restrictions.
 - LTV must be calculated using the lesser of the sale price or appraised value with the deed restrictions.
 - For non-Agency and government loan transactions only, properties that are not subject to deed restrictions (non-restricted properties), but are located in projects or communities with properties that **are subject to deed restrictions**, the presale requirements must be met separately for both non-restricted units and restricted units.
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Loan Submission and Underwriting

General

Follow the guidelines noted in the Underwriting section of the Correspondent Seller Guide for loans submitted to Truist and for loans underwritten by approved Delegated lenders.

Reference: See [Section 1.05: Underwriting](#) in the Correspondent Seller Guide for additional information on underwriting.

Closing and Loan Settlement Documentation

General

- In order to close a loan with a deed restriction, the recorded document creating the restriction must:
 - Meet the Truist requirements set forth in this document or contain lender exemption language with respect to each restriction;

Examples of this lender exemption language:

- *“The provisions of this paragraph relating to the restriction(s) shall not apply to any insurance company, bank, federal savings and loan association, corporate mortgage or real estate investment trust, or their successors or assigns, in the event of a sale to such mortgagees, or sales by such mortgagees after acquiring title by virtue of a deed in lieu of foreclosure or a foreclosure sale”;* or
 - *“The provisions of this paragraph shall not apply to any lender, their successors or assigns, in the event that the lender acquires title by virtue of a deed-in-lieu of foreclosure or a foreclosure sale”*
 - Meet applicable loan program guidelines; **and**
 - Be appropriately addressed in title insurance.
 - The Correspondent lender must:
 - Review the loan documents to determine whether deed restrictions are involved. This includes any of following documents: the purchase contract, the appraisal, the master deed, or the condominium Declarations (Covenants, Conditions and Restrictions) or By-Laws.
 - A full appraisal is required.
 - Review the title commitment for any Schedule B -Section II Exceptions that may reference deed books/pages where covenants, conditions, and restrictions may be recorded.
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Closing and Loan Settlement Documentation, Continued

General, (continued)

- For these minor impediments to title, an endorsement to the title policy (typically ALTA 9) must be included to ensure that a violation of the restrictions will not result in a forfeiture or reversion of title, a lien for any kind for damages, or have an adverse effect on the fair market value of the property.
 - If the deed restrictions do not meet the Truist guidelines as presented in this document, the loan is not eligible for purchase by Truist.
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Title Binder

- The following is NOT intended to replace the more comprehensive [General Section 1.16: Title Insurance](#) located in the Correspondent Seller Guide:
 - The Correspondent lender must include the commitment for Title Insurance and all applicable endorsements in the closed loan package delivered to Truist.
 - The Correspondent lender must review the title commitment to ensure the following guidelines are met:
 - To the extent that any deed restrictions affect the property, they must:
 - Be specifically noted as exceptions in the Commitment, Schedule B-Part II; and
 - Be affirmatively insured by the Title Policy (ALTA 9 Endorsement).
 - Schedule B – Part II of the Commitment must make specific reference to any deed restrictions by listing them as exceptions.
 - It is not acceptable for the title commitment to merely state that an exception exists for anything previously recorded (for example: “Covenants, conditions and restrictions, if any, that appear among the public records.”)
 - Instead, the documents containing such restrictions must be listed by Deed Book and Page Number, or Instrument Number (depending on the jurisdiction’s recordkeeping system) with a notation that this recorded document contains such restrictions.
 - When deed restrictions are present, they must be “insured over” by the final Title Policy.
 - The Title Policy must insure that any present or future violation of these restrictive covenants and conditions will not result in a forfeiture or reversion of title or a lien of any kind for damages, or have an adverse effect on the fair market value of the property. This is usually provided in an Alta 9.1 Endorsement or its equivalent. If the Commitment does not include copies of the Endorsements that will be attached to the final Title Policy, the Correspondent lender should ask the title agent to provide copies of the form of endorsements that will be attached to the final Title Policy.
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