



FHA Free *Assumability*

What is it?

A clause in an FHA purchase money loan, refinance or reverse mortgage. The clause requires FHA be able to perform a foreclosure or deed in lieu of foreclosure without any limitations or restrictions. In short, FHA insured loans cannot be issued if FHA will be responsible for any outstanding payments should the home be foreclosed. This includes not paying the governing community a fee at transfer of title.





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Where is it?

The clause is most typically found in the community governing documents. It may be phrased in different ways. Rec Center fee, Capitol Preservation fee, Capitol Improvement fee, and Asset Preservation fee are a few examples. These fees are charged at change of title and in the case of foreclosure or deed-in-lieu of foreclosure, the fee must be paid by the mortgage lender. Read your Governing Documents to find out more.

How did it get there?

The free assumability requirement is part of the underwriting guidelines for FHA. FHA is charged with protecting the taxpayer, and this clause allows them to assert their rights at foreclosure or deed-in-lieu of foreclosure so they may then sell the house to a buyer who will pay those mandatory fees. The issue is not the community charging a fee at change of ownership, but rather the lender being released from the fee obligation in special circumstances such as foreclosure or deed-in-lieu of foreclosure.

Who can change this?

While this is a FHA underwriting guideline, the reality is FHA would have to go through a multiyear process to change this clause. It affects any type of property with limitations or restrictions at foreclosure. Solar leases and some forms of property ownership are just a couple of other ways this guideline affects borrowers.

Property owners within communities with this limitation. The property owners, as members of the community association (Examples: HOA, Recreation Center), have the right to petition their Board of Directors for governing document changes. Association property owners hold the keys to allowing FHA products within their community. Only the property owners can determine the financial risk their association can or should accept, and which FHA lending products are best suited to their community.

Why?

FHA on behalf of the taxpayer must make sure their right to possess a property is unhampered. In purchase money and refinance loans, that possession is triggered at loan default. On a Reverse Mortgage, foreclosure is the mechanism the lender must use in order to gain title and possession to the property as agreed in the Reverse Mortgage contract.

As a taxpayer, it is in your best interest for FHA to freely assume ownership of a home they already have the right to possess. FHA will then market and sell to a new homeowner.

I own my house, why should I care?

Frequently, older homeowners may need to access their equity in order to remain in their home. Cost of living increases, medical care and other expenses mount up over time, and a Reverse Mortgage may be the best choice to access the equity. If you own your home and there is a possibility you may need to access your equity, you should care about having your future limited.

Even if you never want a Reverse Mortgage, the lack of availability of all FHA products, limits who can purchase in your community. Fewer buyers able to purchase homes in your community, means home prices could be affected and market times could be longer.

What if you had to sell your house? A limitation of available loan products might make that task take longer as you try to locate a buyer who can purchase your house.

What can you do?

Review your association's Governing Documents. If you and your neighbors think FHA product availability is important to a healthy real estate market in your association, petition your Board of Directors to change the Governing Documents. Or run for the Board of Directors and direct the change you want.

