§ 36.4354 Estate of veteran in real property.

(a) The title of the estate in the realty acquired by the veteran, wholly or partly with the proceeds of a guaranteed or insured loan, or owned by him and on which construction, or repairs, or alterations or improvements are to be made, shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, except as modified by paragraph (b) of this section. Such estate shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subject to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Under Secretary for Benefits, or the Director, Loan Guaranty Service:
   (i) That such type of leasehold is customary in the area where the property is located,
   (ii) That a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to; and
   (iii) That the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subject to the lien; or

(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under State law.

(b) Any such property or estate will not fail to comply with the requirements of paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights; or

(5) Sale and lease restrictions:
   (i) Except as to condominiums, the right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right was established by an instrument recorded prior to December 1, 1976, and by the terms thereof is exercisable only if:
      (A) An owner elects to sell;
      (B) The option price is not less than the price at which the then owner is willing to sell to another; and
      (C) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner of the then owner’s election to sell, stating the price and the identity of the proposed vendee;
   (ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document before December 1, 1976 will not fail to comply with the requirements of paragraph (a) of this section by reason of:
      (A) Prohibition against leasing a unit for a period of less than 6 months.
      (B) The existence of a right of first option to purchase or right to provide a substitute buyer reserved to the condominium association provided such option or right is exercisable only if:
         (1) An owner elects to sell;
         (2) The option price is not less than the price at which the then owner is willing to sell to another;
         (3) The terms and conditions under which the option price is to be paid are identical to or are not less favorable to the owner than the terms and conditions under which the owner was willing to sell to the owner’s prospective buyer; and
         (4) Notice of the association’s decision to exercise the option must be mailed to the owner by registered or certified mail within 30 days after notice is mailed by registered or certified mail to the address of the association last known to the owner of the owner’s election to sell, stating the price, terms of sale, and the identity of the proposed vendee.
   (iii) Any property subject to a restriction on the owner’s right to convey to any party of the owner’s choice, which restriction is established by a
document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A prohibition or restriction on leasing an individual unit in a condominium will not cause the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with §36.4862(c).

(iv) Notwithstanding the provisions of paragraphs (b)(5)(i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:

(A) The veteran obtained the property under a State or local political subdivision program designed to assist low- or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions:

(1) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the government housing agency, or a low- or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell.

(2) If the property is resold within a time period as established by local law or ordinance after the purchaser acquires title, a governmental agency may specify a maximum price which the veteran may receive for the property upon resale; or

(3) Such other restriction approved by the Secretary designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price.

(B) A recorded restriction on title designed to provide housing for older persons, provided that the restriction is acceptable under the provisions of the Fair Housing Act, title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C. 3601 et seq. The veteran must be fully informed and consent in writing to the restrictions. A copy of the veteran’s consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis.

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Any other covenant, condition, restriction, or limitation approved by the Secretary in the particular case. Such approval shall be a condition precedent to the guaranty or insurance of the loan; Provided, That the limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, are taken into account in the appraisal of reasonable value required by 38 U.S.C. chapter 37.

(c) The following limitations on the quantum or quality of the estate or...
§ 36.4355 Loans, first, second, or unsecured.

Loans for the purchase of real property or a leasehold estate as limited in the regulations concerning guaranty or insurance of loans to veterans, or for the alteration, improvement, or repair thereof, and for more than $1,500 and more than 40 percent of the reasonable value of such property or estate prior thereto shall be secured by a first lien on the property or estate. Loans for such alteration, improvement, or repairs for more than $1,500 but 40 percent or less of the prior reasonable value of the property shall be secured by a lien reasonable and customary in the community for the type of alteration, improvement, or repair financed. Those for $1,500 or less need not be secured, and in lieu of the title examination the lender may accept a statement from the borrower that he or she has an interest in the property not less than that prescribed in §36.4854(a).

(Authority: 38 U.S.C. 3703(c)(1))