

§ 203.389 Waived title objections.

The Commissioner shall not object to title by reason of the following matters:

(a) Violations of a restriction based on race, color or creed, even where such restriction provides for a penalty of reversion or forfeiture of title or a lien for liquidated damage.

(b)(1) Aviation easements, which were approved by the Secretary at the time of the origination of the mortgage, and other customary easements for public utilities, party walls, driveways, and other purposes.

(2) Easements for public utilities along one or more of the property lines and extending not more than 10 feet therefrom and for drainage or irrigation ditches along the rear 10 feet of the property, provided the exercise of the rights thereunder do not interfere with any of the buildings or improvements located on the subject property.

(c) Easements for underground conduits which are in place and do not extend under any buildings on the subject property;

(d) Mutual easements for joint driveways constructed partly on the subject property and partly on adjoining property, provided the agreements creating such easements are of record;

(e) Encroachments on the subject property by improvements on adjoining property where such encroachments do not exceed 1 foot, provided such encroachments do not touch any buildings or interfere with the use of any improvements on the subject property;

(f) Encroachments on adjoining property by eaves and overhanging projections attached to improvements on subject property where such encroachments do not exceed 1 foot.

(g) Encroachments on adjoining property by hedges, wooden or wire fences belonging to the subject property;

(h) Encroachments on adjoining property by driveways belonging to subject property where such encroachments do not exceed 1 foot, provided there exists a clearance of at least 8 feet between the buildings on the subject property and the property line affected by the encroachment;

(i) Variations between the length of the subject property lines as shown on the application for insurance and as

shown by the record or possession lines, provided such variations do not interfere with the use of any of the improvements on the subject property and do not involve a deficiency of more than 2 percent with respect to the length of the front line or more than 5 percent with respect to the length of any other line;

(j) Encroachments by garages or improvements other than those which are attached to or a portion of the main dwelling structure over easements for public utilities, provided such encroachment does not interfere with the use of the easement or the exercise of the rights of repair and maintenance in connection therewith;

(k) Violations of cost or set back restrictions which do not provide a penalty of reversion or forfeiture of title, or a lien for liquidated damages which may be superior to the lien of the insured mortgage. Violations of such restrictions which do provide for such penalties, provided such penalty rights have been duly released or subordinated to the lien of the insured mortgage, or provided a policy of title insurance is furnished expressly insuring the Commissioner against loss by reason of such penalties.

(1) Customary building and use restrictions which:

(1) Are coupled with a reversionary clause, provided there has been no violation prior to the date of the deed to the Commissioner; or

(2) Are not coupled with a reversionary clause and have not been violated to a material extent.

(m) Outstanding oil, water or mineral rights (or damage caused by the exercise of such rights) which are customarily waived by prudent leading institutions and leading attorneys in the community.

(n) The voluntary or involuntary conveyance of a part of the subject property pursuant to condemnation proceedings or in lieu of condemnation proceedings, if:

(1) The part conveyed does not exceed 10 percent by area of the property;

(2) No damage to existing structures, improvements, or unrepaired damage to sewage, water, or paving has been suffered;

(3) All of the payment received as compensation for the taking by condemnation or conveyance in lieu of condemnation has been applied to reduction of the mortgage indebtedness;

(4) The conveyance occurred subsequent to insurance of the mortgage; and

(5) There is included with the documents and information furnished the Commissioner with the application for insurance benefits, a statement by the mortgagee that the requirements of this paragraph have been met.

(o) Federal tax liens and rights of redemption arising therefrom if the following conditions are observed. If the mortgagee acquires the property by foreclosure the mortgagee shall give notice to the Internal Revenue Service (IRS) of the foreclosure action. The Commissioner will not object to an outstanding right of redemption in IRS if: (1) The Federal tax lien was perfected subsequent to the date of the mortgage lien, and (2) The mortgagee has bid an amount sufficient to make the mortgagee whole if the property is in fact redeemed by the IRS.

[36 FR 34508, Dec. 22, 1971, as amended at 41 FR 49736, Nov. 10, 1976; 72 FR 56161, Oct. 2, 2007]

§ 203.390 Waiver of title—mortgages or property formerly held by the Secretary.

(a) *Mortgages sold by the Secretary.* (1) If the Secretary sells a mortgage and such mortgage is later reassigned to him or the property covered by such mortgage is later conveyed to him, he will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage.

(2) The Secretary will accept an assignment of a mortgage previously sold by him, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage assignment was filed for record. In such instances, the Secretary will not object to title by reason of any such defect.

(b) *Property sold by the Secretary.* (1) If a property held by the Secretary is sold by the Secretary who also insures a

mortgage financing the sale, and the mortgage is later reassigned to the Secretary or the property covered by the mortgage is later conveyed to the Secretary, the Secretary will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date the mortgage was filed for record, except where the lien or other adverse interest arose from a lien or interest that had already been recorded against the mortgagor.

(2) The Secretary will accept an assignment of a mortgage executed in connection with the sale of property by the Secretary, where the mortgagee is unable to complete foreclosure because of a defect in the mortgage instrument, a defect in the mortgage transaction, or a defect in title which existed at or prior to the time the mortgage was filed for record, except where the defect arose from a lien or interest that had already been recorded against the mortgagor on the date that the mortgage was filed for record. Except for the case of a lien or interest that had already been recorded against the mortgagor, the Secretary will not object to title by reason of any of the above defects.

[36 FR 24508, Dec. 22, 1971, as amended at 58 FR 35370, July 1, 1993; 61 FR 36265, July 9, 1996]

§ 203.391 Title objection waiver with reduced insurance benefits.

Payment of an insurance claim will not automatically be refused solely because the title evidence reveals a condition of title not taken into consideration in the original appraisal and not covered by the provisions of § 203.389 of this part, or not otherwise waived in writing by the Secretary. In such instances, the Secretary may, at his or her option, approve the payment of a claim if the mortgagee agrees to accept a reduction in insurance benefits considered adequate by the Secretary to compensate for any anticipated loss to the Mutual Mortgage Insurance Fund as a result of the existence of the title condition at the time of claim.

[57 FR 47974, Oct. 20, 1992]