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September 3, 2025

To: Clients and Friends

From: Daniel S. Engle

Subject: Fannie Mae Selling Guide SEL-2025-07 Permitting Life Estate Ownership and Texas Home Equity Loans

On September 3, 2025, Fannie Mae issued a Selling Guide update (SEL-2025-07) that will permit borrowers to hold title in life estates. Fannie Mae defines these as an ownership interest in which a life tenant has the right to occupy and use the property during their lifetime and the remaindermen have an irrevocable, vested, and alienable interest in the property and will obtain full ownership upon the life tenant's death. Fannie Mae excludes revocable life estates created by instruments such as "Lady Bird Deeds" (sometimes called "enhanced life estates") and transfer on death deeds from their definition—these are not eligible forms of ownership. Fannie Mae will require the life tenant to be a borrower and remaindermen may be co-borrowers. The life tenant and all remaindermen must sign the security instrument as without the consent of the vested remaindermen, a mortgagee's interest would be eliminated upon the death of the life tenant.

Lenders are reminded, however, that on Texas Home Equity Loans made under the authority of Article XVI, Section 50(a)(6) of the Texas Constitution, the collateral is limited to the Texas homestead per Article XVI, Section 50(a)(6)(H). Any "additional collateral" to the loan would be a violation of the Texas Constitution and the applicable cure upon a legal challenge to the validity of the loan would be to release the additional collateral (see Texas Constitution, Article XVI, Section 50(a)(6)(Q)(x)(b)). While a life tenant has the right to occupy the property and thus may establish the property as their Texas homestead protected from most creditors, a vested remainderman does not have a right to occupy the property. Without a right to occupy, a vested remainderman cannot establish a homestead interest in the property that would be protected against the remainderman's creditors. See, e.g., *Lawerence v. Lawrence*, 911 S.W.2d 450, 452 (Texas Court of Appeals, Texarkana 1995) ("One who holds only a future interest with no present right to possession is not entitled to homestead protection in that property.") (quoting *Laster v. First Huntsville Properties Co.*, 826 S.W.2d 125, 130 (Texas Supreme Court 1991)).

This means that if a Texas Home Equity Loan were to be made on property owned in a life estate and the validity of the lien securing the loan was subsequently legally challenged in court, the potential exists that a court would determine that the pledged interest of the vested remaindermen would not be homestead and instead would be improper "additional collateral" for the loan, resulting in the invalidity of the lien. Due to this potential legal risk, Black, Mann & Graham LLP does not recommend closing a Texas Home Equity loan in which the property is held in a life estate that has vested remaindermen. Please note that this issue is not a concern for other forward Texas loans such as purchases and rate/term refinances as these products do not have provisions limiting collateral to the homestead.

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