

## Department of Veterans Affairs

## § 36.4286

upon special appeal to avoid immediate foreclosure.

(Authority: 38 U.S.C. 3713, 3714)

[36 FR 1253, Jan. 27, 1971, as amended at 36 FR 13032, July 13, 1971; 44 FR 16015, Mar. 16, 1979; 55 FR 37474, Sept. 12, 1990]

### § 36.4286 Partial or total loss of guaranty.

(a) There shall be no guaranty liability on the part of the Secretary in respect to any loan as to which a signature to the note, the mortgage or other security instrument is a forgery. Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty shall relieve the Secretary of liability, or shall constitute a defense against liability on account of the guaranty of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: *Provided*, That if a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(b) In taking security required by 38 U.S.C. 3712 and the §36.4200 series, a holder shall obtain the required lien on real property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally in the community in which the property is situated: *Provided*, That a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in §36.4253. If such holder fails in this respect or fails to comply with any of the requirements of 38 U.S.C. 3712 and the §36.4200 series with respect to:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. 3712 or the §36.4200 series,

(2) Inclusion of power to substitute trustees,

(3) The procurement and maintenance of insurance coverage,

(4) Advice to Secretary as to default,  
(5) Notice of intention to begin action,

(6) Notice to the Secretary in any suit or action, or notice of sale,

(7) The release, conveyance, substitution, or exchange of security,

(8) Lack of legal capacity of a party to the transaction incident to which the guaranty is granted,

(9) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(10) The taking into consideration of limitations upon the quantum or quality of the estate or property,

(11) Any other requirement of 38 U.S.C. 3712 or the §36.4200 series which does not by the terms of said section or regulations result in relieving the Secretary of all liability with respect to the loan,

no claim on the guaranty shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure of misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty payment shall subordinate the holder's right to those of the Secretary.

(c) If after the payment of a guaranty, or after a loan is transferred pursuant to §36.4281, the fraud, misrepresentation, or failure to comply with the regulations concerning guaranty of loans to veterans as provided in this section is discovered and the Secretary determines that an increased loss to the Government resulted therefrom,

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the transferee or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

**§ 36.4287 Substitution of trustees.**

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed loan, if it names trustees or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees or other person with such power to sell, who shall succeed to all the rights, powers, and duties of the trustees, or other person, originally designated.

GUARANTY OR INSURANCE OF LOANS TO  
VETERANS

AUTHORITY: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 101, 501, 3701-3704, 3710, 3712-3714, 3720, 3729, 3732, unless otherwise noted.

NOTE: Those requirements, conditions, or limitations which are expressly set forth in 38 U.S.C. chapter 37 are not restated in these regulations and must be taken into consideration in conjunction with §§ 36.4300 to 36.4393 of this part, inclusive.

[53 FR 1350, Jan. 19, 1988]

**§ 36.4300 Applicability of §§ 36.4300 to 36.4393, inclusive.**

(a) Sections 36.4300 to 36.4393 of this part, inclusive, shall be applicable to each loan entitled to an automatic guaranty, or otherwise guaranteed or insured, on or after the date of publication in the FEDERAL REGISTER, and shall be applicable to such loans previously guaranteed or insured to the extent that no legal rights vested under the regulations are impaired.

(b) Title 38 U.S.C., chapter 37, is a continuation and restatement of the provisions of Title III of the Servicemen's Readjustment Act of 1944, and may be considered an amendment to such Title III. References to the sections or chapters of title 38 U.S.C., shall, where applicable, be deemed to refer to the prior corresponding provisions of the law.

(Authority: 38 U.S.C. 501, 3703(c), 3712(g))

[53 FR 1350, Jan. 19, 1988]

**38 CFR Ch. I (7-1-03 Edition)**

**§ 36.4301 Definitions.**

Whenever used in 38 U.S.C. chapter 37 or §§ 36.4300 to 36.4375 of this part, inclusive, and §§ 36.4390 through 36.4393 of this part, unless the context otherwise requires, the terms defined in this section shall have the following meaning:

*A period of more than 180 days.* For the purposes of sections 3707 and 3702(a)(2)(C) of title 38 U.S.C., the term *a period of more than 180 days* shall mean 181 or more calendar days of continuous active duty.

*Acquisition and improvement loan.* A loan to purchase an existing property which includes additional funds for the purpose of installing energy conservation improvements or making other alterations, improvements, or repairs.

(Authority: 38 U.S.C. 3703(c)(1), 3710(a) (1), (4), and (7))

*Alterations.* Any structural changes or additions to existing improved realty.

*Automatic lender.* A lender that may process a loan or assumption <sup>1</sup>/<sub>4</sub> without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 3702(d) there are two categories of lenders who may process loans automatically: (1) Entities such as banks, savings and loan associations, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 3702(d))

*Condominium.* Unless otherwise provided by State law, a condominium is a form of ownership where the buyer receives title to a three dimensional air space containing the individual living unit together with an undivided interest or share in the ownership of common elements.

*Cost* means the entire consideration paid or payable for or on account of the application of materials and labor to tangible property.

*Credit package.* Any information, reports or verifications used by a lender, holder or authorized servicing agent to