

### § 36.4317

to the Secretary or hazard to the security warrants more prompt action.

(Authority: 38 U.S.C. 3732)

(The information collection requirements contained in paragraph (c) were approved by the Office of Management and Budget under control number 2900-0480)

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980; 53 FR 34296, Sept. 6, 1988; 61 FR 28058, June 4, 1996]

#### **§ 36.4317 Notice of intention to foreclose.**

(See also § 36.4319.) Except upon the express waiver of the Secretary, a holder shall not begin proceedings in court or give notice of sale under power of sale, or otherwise take steps to terminate the debtor's rights in the security until the expiration of 30 days after delivery by registered mail to the Secretary of a notice of intention to take such action: Provided, That

(a) Immediate action as required under 38 CFR 36.4346 (i), may be taken if the property to be affected thereby has been abandoned by the debtor or has been or may be otherwise subjected to extraordinary waste or hazard, or if there exist conditions justifying the appointment of a receiver for the property (without reference to any contractual provisions for such appointment);

(b) Any right of a holder to repossess personal property may be exercised without prior notice to the Secretary; but notice of any such action taken shall be given by certified mail to the Secretary within ten days thereafter; and

(c) The notice required under this paragraph shall also be provided to the original veteran-borrower and any other liable obligors by certified mail within 30 days after such notice is provided to the Secretary in all cases in which the current owner of the property is not the original veteran-borrower. A failure by the holder to make a good faith effort to comply with the provisions of this subparagraph may result in a partial or total loss of guaranty or insurance pursuant to VA Regulation 36.4325(b), but such failure shall not constitute a defense to any legal action to terminate the loan. A good faith effort will include, but is not limited to:

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

(1) A search of the holder's automated and physical loan record systems to identify the name and current or last known address of the original veteran and any other liable obligors;

(2) A search of the holder's automated and physical loan record systems to identify sufficient information (e.g., Social Security Number) to perform a routine trace inquiry through a major consumer credit bureau;

(3) Conducting the trace inquiry using an in-house credit reporting terminal;

(4) Obtaining the results of the inquiry;

(5) Mailing the required notices and concurrently providing the Secretary with the names and addresses of all obligors identified and sent notice; and,

(6) Documentation of the holder's records.

(Approved by the Office of Management and Budget under Control Number 2900-0530)

[58 FR 29116, May 19, 1993]

#### **§ 36.4318 Refunding of loans in default.**

(a) Upon receiving a notice of default or a notice under § 36.4317, the Secretary may within 30 days thereafter require the holder upon penalty of otherwise losing the guaranty or insurance to transfer and assign the loan and the security therefore to the Secretary or to another designated by the Secretary upon receipt of payment in full of the balance of the indebtedness remaining unpaid to the date of such assignment. Such assignment may be made without recourse but the transferor shall not thereby be relieved from the provisions of § 36.4325.

(b) If the obligation is assigned or transferred to a third party pursuant to paragraph (a) of this section the Secretary may continue in effect the guaranty or insurance issued with respect to the previous loan in such manner as to cover the assignee or transferee.

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980; 61 FR 28058, June 4, 1996]

#### **§ 36.4319 Legal proceedings.**

(a) When the holder institutes suit or otherwise becomes a party in any legal or equitable proceeding brought on or

## Department of Veterans Affairs

## § 36.4319

in connection with the guaranteed or insured indebtedness, or involving title to, or other lien on, the security, such holder, within the time that would be required if the Secretary were a party to the proceeding, shall deliver to the Secretary, by mail or otherwise, by making such delivery to the loan guaranty officer at the office which granted the guaranty or the insurance, or other office to which the holder has been notified the file is transferred, a copy of every procedural paper filed on behalf of holder, and shall also so deliver, as promptly as possible, a copy of each similar pleading served on holder or filed in the cause by any other party thereto. Notice of, or motion for, continuance and orders thereon are excepted from the foregoing.

(b) A copy of a notice of sale shall be similarly delivered by the holder, or the holder's agent or trustee, to the Secretary at the VA Regional Office of jurisdiction at least 30 days prior to the scheduled liquidation sale, or within 5 days after the date of first publication of the notice, whichever is later. A copy of any other notice of sale or acquisition of the property served on the holder or advice of any sale of which the holder has knowledge shall be similarly delivered to the Secretary, including any such notice of a tax sale or other superior lien or judicial sale. Such notice shall be accompanied by a statement of the account indebtedness and a copy of the liquidation appraisal request, if not previously delivered.

(Authority: 38 U.S.C. 3732)

(c) The procedure prescribed in paragraphs (a) and (b) of this section shall not be applicable in any proceeding to which the Secretary is a party, after the Secretary's appearance shall have been entered therein by a duly authorized attorney.

(d) In any legal or equitable proceeding (including probate and bankruptcy proceedings) to which the Secretary is a party, original process and any other process prior to appearance, proper to be served on the Secretary, shall be delivered to the loan guaranty officer of the regional office of the VA

having jurisdiction of the area in which the court is situated. Within the time required by applicable law, or rule of court, the Secretary will cause appropriate special or general appearance to be entered in the case by an authorized attorney.

(Authority: 38 U.S.C. 3732)

(e) After appearance of the Secretary by attorney all process and notice otherwise proper to serve on the Secretary before or after judgment, if served on the attorney of record, shall have the same effect as if the Secretary were personally served within the jurisdiction of the court.

(Authority: 38 U.S.C. 3732)

(f) If following a default, the holder does not bring appropriate action within 30 days after requested in writing by the Secretary to do so, or does not prosecute such action with reasonable diligence, the Secretary may at the Secretary's option fix a date beyond which no further charges may be included in the computation of the indebtedness for the purposes of accounting between the holder and the Secretary. The Secretary may also intervene in, or begin and prosecute to completion any action or proceeding, in the Secretary's name or in the name of the holder, which the Secretary deems necessary or appropriate. The Secretary shall pay, in advance if necessary, any court costs or other expenses incurred by the Secretary or properly taxed against the Secretary in any such action to which the Secretary is a party, but may charge the same, and also a reasonable amount for legal services, against the guaranteed or insured indebtedness, or the proceeds of the sale of the security to the same extent as the holder (see § 36.4313 of this part), or otherwise collect from the holder any such expenses incurred by the Secretary because of the neglect or failure of the holder to take or complete proper action. The rights and remedies herein reserved are without prejudice

**§ 36.4320**

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

to any other rights, remedies, or defenses, in law or in equity, available to the Secretary.

less a bid in excess of the specified amount was made pursuant to paragraph (a)(3) of this section.

(Authority: 38 U.S.C. 3732)

(Authority: 38 U.S.C. 3732(c))

[13 FR 7276, Nov. 27, 1948, as amended at 45 FR 31065, May 12, 1980; 53 FR 1351, Jan. 19, 1988; 53 FR 4978, Feb. 19, 1988; 53 FR 42950, Oct. 25, 1988, 54 FR 612, Jan. 9, 1989; 54 FR 27163, June 28, 1989]

**§ 36.4320 Sale of security.**

(a) Upon receipt by the Secretary of notice of a liquidation sale of any security for a guaranteed or insured loan, the Secretary shall determine the net value of the security and shall notify the holder of the net value and of the regulatory provision which will govern the disposition of the security.

(C) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount equal to or in excess of that specified, the holder shall credit to the indebtedness the net proceeds of the sale;

(D) A third party acquires the property, or the rights to the property, at the liquidation sale for an amount less than that specified, the holder shall credit to the indebtedness the amount specified.

(1) If the net value of the real property securing a guaranteed or insured loan exceeds the unguaranteed portion of the indebtedness, the Secretary shall specify in advance of the liquidation sale the minimum amount which shall be credited to the indebtedness of the borrower on account of the value of the security to be sold, subject to the following:

(iii) If a minimum amount has been specified by the Secretary, the Secretary's liability under loan guaranty shall be the total indebtedness less the amount credited to the indebtedness under paragraph (a)(1)(ii) of this section, not to exceed the Secretary's maximum liability as computed under § 35.4321 of this part.

(2) If the net value of the real property securing a guaranteed or insured loan does not exceed the unguaranteed portion of the indebtedness:

(i) The specified amount in such cases shall be the lesser of the net value of the property or the total indebtedness.

(i) The Secretary shall notify the holder that no minimum amount will be specified for credit to the indebtedness on account of the value of the security to be sold;

(ii) If a minimum amount for credit to the indebtedness has been specified in relation to a liquidation sale of real property, and:

(ii) The Secretary may not accept conveyance or transfer of the property;

(A) The holder acquires the property, or the rights to the property, at the sale for an amount not in excess of such specified amount, the holder shall credit to the indebtedness the amount specified. The holder then may retain the property or, not later than 15 days after the date of sale, advise the Secretary of the holder's election to convey or transfer the property, or the rights to the property, to the Secretary;

(iii) The holder shall credit against the indebtedness the net proceeds of the sale, and the Secretary's liability under loan guaranty shall be limited to the total indebtedness less the amount credited to the indebtedness not to exceed the Secretary's maximum liability as computed under § 36.4321 of this part; and

(B) The holder acquires the property, or the rights to the property, at the liquidation sale for an amount in excess of the specified amount, the indebtedness shall be credited with the proceeds of the sale. The holder may elect to convey the property to the Secretary under the terms of paragraph (a)(1)(ii)(A) of this section, un-

(iv) The liability of the Secretary shall not be subject to adjustment by reason of any subsequent disposition of the property by the holder.

(3) If a minimum bid is required under applicable State law, or decree of foreclosure or order of sale, or other lawful order or decree, and:

(i) Such minimum bid exceeds an amount which has been specified by the Secretary under paragraph (a)(1) of this section; and