

Department of Veterans Affairs

§ 36.4507

residence or other dwelling, the Department of Veterans Affairs may require the veteran to deposit with the Department of Veterans Affairs, or in an escrow satisfactory to the Department of Veterans Affairs, 10 percent of the estimated cost thereof or such alternative sum, in cash or its equivalent, as the Department of Veterans Affairs may determine to be necessary in order to afford adequate assurance that sufficient funds will be available, from the proceeds of the loan or from other sources, to assure completion of the construction, repair, alteration, or improvement in accordance with the plans and specifications upon which the Department of Veterans Affairs based its loan commitment.

(Authority: 38 U.S.C. 501, 3724, and 3729)

[15 FR 6288, Sept. 20, 1950, as amended at 23 FR 2339, Apr. 10, 1958; 33 FR 6976, May 9, 1968; 35 FR 17180, Nov. 7, 1970; 41 FR 32218, Aug. 2, 1976; 47 FR 46700, Oct. 20, 1982; 50 FR 5755, Feb. 12, 1985]

§ 36.4505 Maturity of loan.

(a) The maturity of a loan shall not exceed 25 years and 32 days. If the Department of Veterans Affairs determines the income and expenses of a veteran-applicant under customary credit standards would prevent the veteran from making the required loan payments for a loan which matures in 25 years and 32 days, but the veteran would be able to make the loan payments over a longer period of time, the loan may be made with a maturity not in excess of 30 years and 32 days.

(b) Every loan shall be repayable within the estimated economic life of the property securing the loan.

(c) Nothing in this section shall preclude extension of the loan pursuant to the provisions of § 36.4506.

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

[46 FR 43675, Aug. 31, 1981]

§ 36.4506 Recasting.

In the event of default or to avoid imminent default, the Department of Veterans Affairs may at any time enter into an agreement with the borrower which will permit the latter temporarily to repay the obligation on a basis appropriate to the borrower's ap-

parent current ability to pay or may enter into an appropriate recasting or extension agreement: *Provided*, That no such agreement shall extend the ultimate repayment of a loan beyond the expiration of 30 years and 32 days from the date of the loan. *Provided further*, That nothing in this section shall be deemed to limit the forbearance or indulgence which the Secretary may extend in an individual case pursuant to the provisions of 38 U.S.C. 3720(f).

[46 FR 43675, Aug. 31, 1981]

§ 36.4507 Refinancing of mortgage or other lien indebtedness.

(a) Loans may be made for the purpose of refinancing (38 U.S.C. 3710(a)(5)) an existing mortgage loan or other indebtedness secured by a lien of record on a dwelling or farm residence owned and occupied by an eligible veteran as the veteran's home, provided that:

(1) The amount of the loan does not exceed the sum due the holder of the mortgage or other lien indebtedness on such dwelling or farm residence, and also is not more than the reasonable value of the dwelling or farm residence, and

(2) The loan is otherwise eligible.

(b) A refinancing loan for an amount which exceeds the sum due the holder of the mortgage or other lien indebtedness (the excess proceeds to be paid to the veteran) may also be made, *Provided, That*:

(1) The loan is otherwise eligible, and

(2) The issuance of a commitment to make any such loan for an amount which exceeds eighty (80) percent of the reasonable value of the veteran's dwelling or farm residence shall require, unless the Under Secretary for Benefits otherwise directs, the approval of the Director, Loan Guaranty Service.

(c) Nothing shall preclude making a loan pursuant to the provisions of 38 U.S.C. 3710(a)(5) to an eligible veteran having home loan guaranty entitlement to refinance a loan previously guaranteed insured or made by the Secretary which is outstanding on the dwelling or farm residence owned and occupied or to be reoccupied after the

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completion of major alterations, repairs, or improvements to the property, by the veteran as the veteran's home.

(Authority: 38 U.S.C. 3711)

(d) A refinancing loan may include contractual prepayment penalties, if any, due the holder of the mortgage or other lien indebtedness to be refinanced.

(e) Nothing in this section shall preclude the refinancing of the balance due for the purchase of land on which new construction is to be financed through the proceeds of the loan, or the refinancing of the balance due on an existing land sale contract relating to a veteran's dwelling or farm residence.

[35 FR 18872, Dec. 11, 1970, as amended at 46 FR 43675, Aug. 31, 1981; 49 FR 42571, Oct. 23, 1984; 61 FR 28059, June 4, 1996]

§ 36.4508 Transfer of property by borrower.

(a) Direct loans for which commitments are made on or after March 1, 1988, are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent. The following shall apply:

(1) The Department of Veterans Affairs shall include in the mortgage or deed of trust and the promissory note or bond on any loan for which a commitment was made on or after March 1, 1988, the following warning in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT". Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document.

(2) The instrument securing a direct loan for which a commitment is made on or after March 1, 1988, shall include:

(i) A provision that the Department of Veterans Affairs or other holder may declare the loan immediately due and

payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 3714. This option may not be exercised if the transfer is the result of:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become a joint owner of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a); or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) A provision that a funding fee equal to one-half of one percent of the loan balance as of the date of transfer shall be payable to the Department of Veterans Affairs or its authorized agent. Furthermore, this provision shall provide that if this fee is not paid it shall constitute an additional debt to that already secured by the instrument; and,

(iii) A provision authorizing an assumption processing charge, not to exceed the lesser of \$300 and the actual