

Department of Veterans Affairs

§ 36.4514

Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program. The Secretary shall not make, increase, extend, or renew a loan secured by a building or manufactured home that is located or to be located in an area identified by the Federal Emergency Management Agency as having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act, as amended, unless the building or manufactured home and any personal property securing the loan is covered by flood insurance for the term of the loan. The amount of flood insurance must be at least equal to the lesser of the outstanding principal balance of the loan or the maximum limit of coverage available for the particular type of property under the National Flood Insurance Act, as amended. The requirements of 38 CFR 36.4700 through 36.4709 shall apply to direct loans made pursuant to 38 U.S.C. 3711 and 3761 through 3764. All hazard and flood insurance shall be carried with a company or companies satisfactory to the Secretary and the policies and renewals thereof shall be held in the possession of the Secretary and contain a mortgagee loss payable clause in favor of and in a form satisfactory to the Secretary.

(Authority: 42 U.S.C. 4012a, 4106(a))
[62 FR 5531, Feb. 6, 1997]

§ 36.4513 Foreclosure and liquidation.

In the event of a foreclosure sale or other liquidation of the security for a loan, the Department of Veterans Affairs shall credit upon the indebtedness the greater of:

(a) The net proceeds of the sale, or

(b) The current market value of the property as determined by the Department of Veterans Affairs, less the costs and expenses of liquidation.

In no event shall the credit pursuant to paragraph (b) of this section exceed the amount of the gross indebtedness, nor shall such credit be less than the amount legally required to be credited to the indebtedness under local law. If a deed in lieu of foreclosure is accepted, the consideration will be a full and

complete release of liability of the obligors, or such lesser amount as may be agreed upon between the obligors and the Department of Veterans Affairs.

[23 FR 2340, Apr. 10, 1958]

§ 36.4514 Eligibility requirements.

Prior to making a loan, or a commitment therefor, the Department of Veterans Affairs shall determine that:

(a) The applicant is an eligible veteran.

(b) The applicant has full capacity under local law to enter into binding contracts.

(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred and that the proposed payments on such obligation bear a proper relationship to present and anticipated income and expenses as determined by use of the credit standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 501)

(d) Private capital is not available in the area at an interest rate not in excess of the rate authorized for guaranteed home loans for a loan for which the veteran is qualified under 38 U.S.C. 3710.

(e) The applicant is unable to obtain a loan for such purpose from the Secretary of Agriculture, under the Bankhead-Jones Farm Tenant Act, as amended, or under the Housing Act of 1949.

(f) In respect to a loan application received on or after September 15, 1956, there has been compliance by the applicant with the certification requirements prescribed in 38 U.S.C. 3704(c).

(g) The applicant has certified, in such form as the Secretary shall prescribe, that

(1) Neither the applicant nor anyone authorized to act for the applicant, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status, or national origin;

(2) The applicant recognizes that any restrictive covenant on the property

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relating to race, color, religion, sex, handicap, familial status, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) The applicant understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

[15 FR 6290, Sept. 20, 1950, as amended at 20 FR 6260, Aug. 26, 1955; 24 FR 2658, Apr. 7, 1959; 36 FR 13032, July 13, 1971; 56 FR 9862, Mar. 8, 1991]

§ 36.4515 Estate of veteran in real property.

(a) The estate in the realty acquired by the veteran, wholly or partly with the proceeds of a loan hereunder, or owned by the veteran and on which improvements on a farmhouse are to be financed by such loan, shall be not less than:

(1) A fee simple estate therein, legal or equitable; or

(2) A leasehold estate running or renewable at the option of the lessee for a period of not less than 14 years from the maturity of the loan, or to any earlier date at which the fee simple title will vest in the lessee, which is assignable or transferable, if the same be subjected to the lien; however, a leasehold estate which is not freely assignable and transferable will be considered an acceptable estate if it is determined by the Under Secretary for Benefits, or the Director, Loan Guaranty Service, (i) that such type of leasehold is customary in the area where the property is located; (ii) that a veteran or veterans will be prejudiced if the requirement for free assignability is adhered to and (iii) that the assignability and other provisions applicable to the leasehold estate are sufficient to protect the interests of the veteran and the Government and are otherwise acceptable; or

(3) A life estate, provided that the remainder and reversionary interests are subjected to the lien. The title to such estate shall be such as is acceptable to informed buyers, title companies, and attorneys, generally, in the community in which the property is situated, ex-

cept as modified by paragraph (b) of this section; or

(4) A beneficial interest in a revocable Family Living Trust that ensures that the veteran, or veteran and spouse, have an equitable life estate, provided the lien attaches to any remainder interest and the trust arrangement is valid under State law.

(b) Any such property or estate will not fail to comply with the requirements in paragraph (a) of this section by reason of the following:

(1) Encroachments;

(2) Easements;

(3) Servitudes;

(4) Reservations for water, timber, or subsurface rights;

(5) Right in any grantor or cotenant in the chain of title, or a successor of either, to purchase for cash, which right by the terms thereof is exercisable only if:

(i) An owner elects to sell,

(ii) The option price is not less than the price at which the then owner is willing to sell to another, and

(iii) Exercised within 30 days after notice is mailed by registered mail to the address of optionee last known to the then owner, of the then owner's election to sell, stating the price and the identity of the proposed vendee;

(6) Building and use restrictions whether or not enforceable by a reverter clause if there has been no breach of the conditions affording a right to an exercise of the reverter;

(7) Any other covenant, condition, restriction, or limitation approved by the Department of Veterans Affairs in the particular case.

The limitations on the quantum or quality of the estate or property that are indicated in this paragraph, insofar as they may materially affect the value of the property for the purpose for which it is used, shall be taken into account in the appraisal of reasonable value.

[15 FR 6290, Sept. 20, 1950, as amended at 24 FR 2658, Apr. 7, 1959; 28 FR 11506, Oct. 29, 1963; 33 FR 18027, Dec. 4, 1968; 34 FR 11095, July 1, 1969; 45 FR 20472, Mar. 28, 1980; 56 FR 9862, Mar. 8, 1991; 61 FR 28059, June 4, 1996]

§ 36.4516 Lien requirements.

(a) Loans for the purchase of a dwelling or for the purchase of a farm on