

**§ 36.4277**

**38 CFR Ch. I (7-1-04 Edition)**

holder may charge against the proceeds of the sale of the security; against gross amounts collected; or, in the computation of a claim under the guaranty, if lawfully authorized by the loan agreement and subject to §36.4284, any of the following items actually paid:

(1) Any expense which is reasonably necessary for preservation of the security,

(2) Court costs in a foreclosure or other proper judicial proceeding involving the security,

(3) Other expenses reasonably necessary for collecting the debt, or repossession or liquidation of the security, including a reasonable sales commission to the dealer or sales broker for resale of the security,

(4) Reasonable trustee's fees or commissions paid incident to the sale of real property,

(5) Reasonable amount for legal services actually performed not to exceed 10 percent of the unpaid indebtedness as of the date of the first uncured default, or \$850 whichever is less. In no event may the combined total of the amounts claimed for trustee's fees and legal services (paragraphs (b)(4) and (5) of this section) exceed \$850.

(6) The cost of a credit report(s) on the debtor(s), which is (are) to be forwarded to the Secretary in connection with the claim,

(7) Reasonable and customary costs of property inspections,

(8) Any other expense or fee that is approved in advance by the Secretary.

(Authority: 38 U.S.C. 3720(g))

(c) In claims filed under §36.4283(f)(4) of this part, the following costs and expenditures actually incurred and paid may be included in the computation of the indebtedness:

(1) Property preservation or repair costs incurred prior to the date of the liquidation appraisal, to the extent that they contributed to the minimum selling price of the property as determined by the Secretary, and subject to the limitation that they do not exceed the actual cost incurred by the holder, and,

(2) Costs of loan termination, including, but not limited to:

(i) The reasonable and customary expense of transporting the home to the

site where it will be repaired and/or resold;

(ii) The cost of the liquidation appraisal;

(iii) A reasonable amount for legal services actually performed and trustee fees, not to exceed a total of \$700;

(iv) Court costs in a foreclosure or other judicial proceeding involving the security;

(v) Any other expenses reasonably necessary for repossession of the security or other termination of the loan; and,

(vi) Any other expense or fee that is approved in advance by the Secretary.

[36 FR 1253, Jan. 27, 1971, as amended at 45 FR 38056, June 6, 1980; 53 FR 27049, July 18, 1988; 53 FR 34295, Sept. 6, 1988; 55 FR 37474, Sept. 12, 1990; 58 FR 29114, May 19, 1993; 58 FR 37860, July 14, 1993; 59 FR 48565, Sept. 22, 1994]

**§ 36.4277 Release of security.**

(a) Except upon full payment of the indebtedness the holder shall not release a lien or other right in or to property held as security for a guaranteed loan, or grant a fee or other interest in such property, without the prior approval of the Secretary, unless in the opinion of the holder such release does not involve a decrease in the value of the security in excess of \$500: *Provided*, That the aggregate of the reduction in the original value of the security resultant from such releases without the Secretary's prior approval does not exceed \$500.

(b) Except upon full payment of the indebtedness or upon the prior approval of the Secretary, the holder shall not release a lien under paragraph (a) of this section unless the consideration received for the release is commensurate with the fair market value of the property released and the entire consideration is applied to the indebtedness, or if encumbrance on other property is accepted in lieu of that released it shall be the holder's duty to acquire such lien on property of substantially equal value which is reasonably capable of serving the purpose for which the property released was utilized.

(c) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the

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title of a purchaser to the property released.

(d) The holder shall notify the Secretary of any such release or substitution of security within 30 days after completion of such transaction.

(e) The release of the personal liability of any obligor on a guaranteed obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor, except when such act or omission consists of

(1) Failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed debt is thereby impaired or destroyed; or

(2) An election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by §36.4280 and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates is such notice to the holder; or

(3) The release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on his or her account pursuant to 38 U.S.C. 3712; or

(4) The release of an obligor or obligors as provided in §36.4279.

(5) The release of an obligor, or obligors, incident to the sale of property which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

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

[36 FR 1253, Jan. 27, 1971, as amended at 53 FR 34295, Sept. 6, 1988; 55 FR 37474, Sept. 12, 1990]

**§36.4278 Servicing procedures for holders.**

(a) *Establishment of loan servicing program.* The holder of a loan guaranteed or insured by the Secretary shall develop and maintain a loan servicing program which follows accepted industry standards for servicing of similar type conventional loans. The loan servicing program established pursuant to this section may employ different servicing approaches to fit individual borrower circumstances and avoid establishing a fixed routine. However, it must incorporate each of the provisions specified in paragraphs (b) through (l) of this section.

(b) *Procedures for providing information.* (1) Loan holders shall establish procedures to provide loan information to borrowers, arrange for individual loan consultations upon request and maintain controls to assure prompt responses to inquiries. One or more of the following means of making information readily available to borrowers is required:

(i) An office staffed with trained servicing personnel with access to loan account information located within 200 miles of the property.

(ii) Toll-free telephone service or acceptance of collect telephone calls at an office capable of providing needed information.

(2) All borrowers must be informed of the system available for obtaining answers to loan inquiries, the office from which the needed information may be obtained, and reminded of the system at least annually.

(c) *Statement for income tax purposes.* Within 60 days after the end of each calendar year, the holder shall furnish to the borrower a statement of the interest paid and, if applicable, a statement of the taxes disbursed from the escrow account during the preceding year. At the borrower's request, the holder shall furnish a statement of the escrow account sufficient to enable the borrower to reconcile the account.

(d) *Change of servicing.* Whenever servicing of a loan guaranteed or insured by the Secretary is transferred from one holder to another, notice of such transfer by both the transferor and transferee, the form and content of such notice, the timing of such notice,