

§ 36.4338

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

(iv) That failure to file an answer within 30 days of the complaint will result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(m) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(n) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 3704 and part 44 of this title or loss of automatic processing authority pursuant to 38 U.S.C. 3702, or other actions by the Government under any other law including but not limited to title 18 U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 3703, 3710)

(Approved by the Office of Management and Budget under control number 2900-0521)

[59 FR 49200, Sept. 27, 1994, as amended at 61 FR 56449, Nov. 1, 1996; 62 FR 53965, Oct. 17, 1997; 62 FR 63454, Dec. 1, 1997; 64 FR 19910, Apr. 23, 1999]

§ 36.4338 Death or insolvency of holder.

(a) Immediately upon the death of the holder and without the necessity of request or other action by the debtor or the Secretary, all sums then standing as a credit balance in a trust, or deposit, or other account to cover taxes, insurance accruals, or other items in connection with the loan secured by the encumbered property, whether stated to be such or otherwise designated, and which have not been credited on the note shall, nevertheless, be treated as a setoff and shall be deemed to have been credited thereon as of the date of the last debit to such account, so that the unpaid balance of the note as of that date will be reduced by the amount of such credit balance:

Provided, That any unpaid taxes, insurance premiums, ground rents, or advances may be paid by the holder of the indebtedness, at the holder's option, and the amount which otherwise would have been deemed to have been credited on the note reduced accordingly. This paragraph shall be applicable

whether the estate of the deceased holder is solvent or insolvent.

(b) The provisions of paragraph (a) of this section shall also be applicable in the event of:

(1) Insolvency of holder;

(2) Initiation of any bankruptcy or reorganization, or liquidation proceedings as to the holder, whether voluntary or involuntary;

(3) Appointment of a general or ancillary receiver for the holder's property; or in any case

(4) Upon the written request of the debtor if all secured and due insurance premiums, taxes, and ground rents have been paid, and appropriate provisions made for future accruals.

(c) Upon the occurrence of any of the events enumerated in paragraph (a) or (b) of this section, interest on the note and on the credit balance of the deposits mentioned in paragraph (a) shall be set off against each other at the rate payable on the principal of the note, as of the date of last debit to the deposit account. Any excess credit of interest shall be treated as a set-off against the unpaid advances, if any, and the unpaid balance of the note.

(d) The provisions of paragraphs (a), (b) and (c) of this section shall apply also to corporations. The dissolution thereof by expiration of charter, by forfeiture, or otherwise shall be treated as is the death of an individual as provided in paragraph (a) of this section.

[13 FR 7279, Nov. 27, 1948, as amended at 40 FR 34593, Aug. 18, 1975]

§ 36.4339 Qualification for designated fee appraisers.

To qualify for approval as a designated fee appraiser, an applicant must show to the satisfaction of the Secretary that his or her character, experience, and the type of work in which he or she has had experience for at least 5 years qualifies the applicant to competently appraise and value within a prescribed area the type of property to which the approval relates.

[40 FR 34593, Aug. 18, 1975]