

**§ 36.4828**

**38 CFR Ch. I (7-1-08 Edition)**

property, without prior approval of the Secretary.

(2) The holder may, without the prior approval of the Secretary, release the lien on a portion of the property securing the loan provided:

(i) The holder has obtained an appraisal from the Secretary showing the value of the security prior to the partial release of the lien and the value of the security on which the lien will remain;

(ii) The portion of the property still subject to the lien is fit for dwelling purposes; and

(iii) The loan-to-value ratio after the partial release of the lien:

(A) Will be not more than 80 percent; or

(B) If the loan-to-value ratio after the partial release of the lien is 80 percent or higher, any proceeds received as consideration from the partial release of the lien shall be applied to the unpaid loan balance.

(b) A holder may release from the lien personal property including crops without the prior approval of the Secretary.

(c) Failure of the holder to comply with the provisions of this section shall not in itself affect the validity of the title of a purchaser to the property released.

(d) The release of the personal liability of any obligor on a guaranteed or insured 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 or insurer, 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 or insured 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 § 36.4817 and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to pro-

ceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in 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 the assuming veteran's account pursuant to 38 U.S.C. chapter 37; or

(4) The release of an obligor or obligors as provided in § 36.4815; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 3714.

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

**§ 36.4828 Partial or total loss of guaranty or insurance.**

(a) Subject to the incontestable provisions of 38 U.S.C. 3721 as to loans guaranteed or insured on or subsequent to July 1, 1948, there shall be no liability on account of a guaranty or insurance, or any certificate or other evidence thereof, with respect to a transaction in which a signature to the note, the mortgage, or any other loan papers, or the application for guaranty or insurance is a forgery; or in which the certificate of discharge or the certificate of eligibility is counterfeited, or falsified, or is not issued by the Government.

(1) Except as to a holder who acquired the loan instrument before maturity, for value, and without notice, and who has not directly or by agent participated in the fraud, or in the misrepresentation hereinafter specified, any willful and material misrepresentation or fraud by the lender, or by a holder, or the agent of either, in procuring the guaranty or the insurance credit, shall relieve the Secretary of liability, or, as to loans guaranteed or insured on, or subsequent to July 1, 1948, shall constitute a defense against liability on account of the guaranty or insurance of the loan in respect to which the willful misrepresentation, or the fraud, is practiced: *Provided*, that if

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a misrepresentation, although material, is not made willfully, or with fraudulent intent, it shall have only the consequences prescribed in paragraphs (b) and (c) of this section.

(2) [Reserved]

(b) In taking security required by 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, a holder shall obtain the required lien on property the title to which is such as to be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated: *Provided*, that a title will not be unacceptable by reason of any of the limitations on the quantum or quality of the property or title stated in §36.4854(b) and if such holder fails in this respect or fails to comply with 38 U.S.C. chapter 37 and the regulations concerning guaranty or insurance of loans to veterans, then no claim on the guaranty or insurance shall be paid on account of the loan with respect to which such failure occurred, or in respect to which an unwillful misrepresentation occurred, until the amount by which the ultimate liability of the Secretary would thereby be increased has been ascertained. The burden of proof shall be upon the holder to establish that no increase of ultimate liability is attributable to such failure or misrepresentation. The amount of increased liability of the Secretary shall be offset by deduction from the amount of the guaranty or insurance otherwise payable, or if consequent upon loss of security shall be offset by crediting to the indebtedness the amount of the impairment as proceeds of the sale of security in the final accounting to the Secretary. To the extent the loss resultant from the failure or misrepresentation prejudices the Secretary's right of subrogation acceptance by the holder of the guaranty or insurance payment shall subordinate the holder's right to those of the Secretary. Adjustments under this section may be made for failure to comply with:

(1) Obtaining and retaining a lien of the dignity prescribed on all property upon which a lien is required by 38 U.S.C. chapter 37 or the regulations

concerning guaranty or insurance of loans to veterans,

(2) Inclusion of power to substitute trustees (§36.4830),

(3) The procurement and maintenance of insurance coverage (§36.4829),

(4) Any notice required by §36.4817,

(5) The release, conveyance, substitution, or exchange of security (§36.4827),

(6) Lack of legal capacity of a party to the transaction incident to which the guaranty or the insurance is granted (§36.4831),

(7) Failure of the lender to see that any escrowed or earmarked account is expended in accordance with the agreement,

(8) The taking into consideration of limitations upon the quantum or quality of the estate or property (§36.4854(b)),

(9) Any other requirement of 38 U.S.C. chapter 37 or the regulations concerning guaranty or insurance of loans to veterans which does not by the terms of said chapter or the regulations concerning guaranty or insurance of loans to veterans result in relieving the Secretary of all liability with respect to the loan.

(c) If after the payment of a guaranty or an insurance loss, or after a loan is transferred pursuant to §36.4820(a), the fraud, misrepresentation or failure to comply with the regulations in this subpart as provided in this section is discovered and the Secretary determines that an increased loss to the government resulted therefrom the transferor or person to whom such payment was made shall be liable to the Secretary for the amount of the loss caused by such misrepresentation or failure.

(Authority: 38 U.S.C. 3703 and 3720)

**§ 36.4829 Hazard insurance.**

The holder shall require insurance policies to be procured and maintained in an amount sufficient to protect the security against the risks or hazards to which it may be subjected to the extent customary in the locality. All moneys received under such policies covering payment of insured losses shall be applied to restoration of the security or to the loan balance. Flood insurance will be required on any