

**Department of Veterans Affairs**

**§ 36.4829**

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

**§ 36.4830**

building or personal property securing a loan at any time during the term of the loan that such security is 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. 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 Secretary cannot guarantee a loan for the acquisition or construction of property located in an area identified by the Federal Emergency Management Agency as having special flood hazards unless the community in which such area is situated is then participating in the National Flood Insurance Program.

(Authority: 38 U.S.C. 3703(c)(1), 42 U.S.C. 4106(a))

**§ 36.4830 Substitution of trustees.**

In jurisdictions in which valid, any deed of trust or mortgage securing a guaranteed or insured loan, if it names trustees, or confers a power of sale otherwise, shall contain a provision empowering any holder of the indebtedness to appoint substitute trustees, or other person with such power to sell, who shall succeed to all the rights, powers and duties of the trustees, or other person, originally designated.

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

**§ 36.4831 Capacity of parties to contract.**

Nothing in §§ 36.4800 through 36.4880 shall be construed to relieve any lender of responsibility otherwise existing, for any loss caused by the lack of legal capacity of any person to contract, convey, or encumber, or caused by the existence of other legal disability or defects invalidating, or rendering unenforceable in whole or in part, either the loan obligation or the security therefor.

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

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

**§ 36.4832 Geographical limits.**

Any real property purchased, constructed, altered, improved, or repaired with the proceeds of a guaranteed or insured loan shall be situated within the United States which for purposes of 38 U.S.C. chapter 37 is here defined as the several States, Territories and possessions, and the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

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

**§ 36.4833 Maintenance of records.**

(a)(1) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof, including copies of bills and receipts for such disbursements. These records shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan, or, if the Secretary has paid a claim on the guaranty, until 3 years after such claim was paid. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record and, upon request, make it available to the Secretary for review shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, or to have not made the disbursement for which reimbursement is claimed, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(2) The holder shall maintain records supporting their decision to approve any loss mitigation option for which an incentive is paid in accordance with § 36.4819(a). Such records shall be retained a minimum of 3 years from the date of such incentive payment and shall include, but not be limited to, credit reports, verifications of income, employment, assets, liabilities, and other factors affecting the obligor's credit worthiness, work sheets, and other documents supporting the holder's decision.

(3) For any loan where the claim on the guaranty was paid on or after February 1, 2008, or action described in