

CITATION: VAOPGCPREC 5-90
Vet. Aff. Op. Gen. Couns. Prec. 5-90

DATE: 03-29-90

TEXT:

SUBJECT: Waiver of indebtedness
Formerly O.G.C. Advisory Opinion 8-89 dated 3-21-89.

QUESTION PRESENTED:

May VA consider a veteran's request for a waiver of the recovery of a loan guaranty indebtedness if at the foreclosing lender's suggestion, subsequent to foreclosure, the veteran redeems the property securing the mortgage, and simultaneously transfers title to a third-party purchaser?

COMMENTS:

1. After foreclosure of a VA guaranteed loan and the sale of the property securing the loan, which ultimately became part of the VA portfolio, the veteran at the lender's suggestion redeemed the property and sold the property to a third-party purchaser. This was accomplished after VA paid a claim to the lender in the amount of \$14,075.48. The veteran alleges that he only agreed to enter into such a transaction after he assumed that the entire indebtedness would be satisfied. As this was not the result, the veteran is seeking a waiver of the indebtedness.

2. In your referral you cite VA Manual MP-4, Part-I, Chapter 8, paragraph 8C.03 which provides that waivers will not be considered in situations where the property is redeemed by the veteran, spouse, or their assignee. You ask if a disposition of this property, as in this case, constitutes a loss of the property thereby enabling the veteran to seek a waiver of the indebtedness, notwithstanding the manual provision.

3. The law, 38 U.S.C. § 3102(b), conditions such debt waiver upon default and loss of the property. Neither the statute nor regulations define the term loss of property for purposes of debt waiver. The manual at MP-4, Part-I, section 8C.06c provides a definition as to what would constitute a loss of property. That definition specifies that there will be no loss of property "in those cases where the veteran or spouse has a legal or equitable interest in the property and continues to occupy the property as a home. 'Loss of the property' generally will be deemed to exist where the veteran or spouse has lost all right, title and interest in the property through foreclosure, voluntary deed, or other liquidation of the

security."

4. The veteran presently have neither a legal or equitable interest in the property. The initial loss of an ownership interest was sustained through a foreclosure. Subsequently, through redemption, the veteran reacquired title to the property. That redemption was not long lasting, however, as the property was conveyed to a third-party purchaser at the suggestion of the mortgagee.

5. We have not been able to find any information which would disclose the intent of the prohibition cited in MP-4, Part I, paragraph 8C.03. However, we believe that such is based upon the requirement in the statute that to be eligible for a waiver the debtor must have suffered a loss of the property. That prohibition, coupled with the definition of loss of property in the manual, provides a clear indication that those provisions were intended to preclude a mortgagor from redeeming the property, continuing to reside in the property, and seeking a waiver of the indebtedness.

6. In the instant situation, this does not appear to be the case. The redemption was completed at the lender's suggestion, the veteran and spouse regained an interest in the property only long enough to convey it to a third party, and there was little if any gain by the debtors.

HELD:

In this particular case the veteran and spouse for all intents and purposes lost their entire interest in the property as a result of the loan termination, as defined in the VA manual. A waiver request may be considered in this situation, notwithstanding the veteran and spouse's redemption of the property after foreclosure.

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