

CITATION: VAOPGCPREC 6-90
Vet. Aff. Op. Gen. Couns. Prec. 6-90

DATE: 03-29-90

TEXT:

Transfer of Residential Properties acquired under the Loan Guaranty Program to VHS & RA

QUESTIONS PRESENTED:

- a. Are properties acquired by the Secretary of Veterans Affairs, pursuant to the home loan program, available for transfer to the Veterans Health Service and Rehabilitation Administration (VHS & RA) for use as medical related facilities?
- b. Upon transfer, should VA impose restrictions on the use of such properties similar to the restrictions imposed when vendee properties are transferred to nonprofit organizations assisting homeless veterans?

COMMENTS:

1. You are seeking our opinion on a proposed transaction which would involve the transfer of title of certain VA acquired residential properties to VHS & RA for use by VA as medical related facilities. Title to these properties would be transferred from the Secretary to the United States of America on behalf of the Department of Veterans Affairs. You are also asking whether there would be any basis for seeking consideration for the transfers from VHS & RA and whether conveyancing documents should include any restrictions on the use of such properties.
2. The Secretary's authority to acquire properties for use as medical facilities is governed by the provisions of 38 U.S.C. § 5003(a)(2). That section states that the Secretary may acquire by purchase, lease, condemnation, donation, exchange, or otherwise any facility that the Secretary considers necessary for use as a medical facility. The authority granted under this section is extensive and provides absolute discretion to the Secretary in the selection and acquisition of appropriate properties.
3. Moreover, the Secretary's discretionary authority to acquire properties from the vendee property inventory is supported by the absence of any statutory limitation as to who may be the recipient of such properties when they are transferred under the home loan program. (38 U.S.C. § 1820(a)(a)(5).) Based on the absence of any such limitation, coupled with the Secretary's absolute authority to

acquire any property for use as a medical related facility, we cannot find anything which would prohibit the transfer of those vendee properties which meet VA's needs and requirements to the VHS & RA. Transfer of the properties for this purpose may be accomplished under any of the methods recited in the law.

4. Under the terms of the proposal the transfers would include a payment to the Loan Guaranty Revolving Fund as consideration for the properties. To assess a reasonable price for such properties would conform with Decisions of the Comptroller General of the United States which have consistently held that, under 31 U.S.C. § 1301(a), accepting such transfers without consideration may be considered unauthorized augmentations of Agency appropriations. To arrive at a reasonable price to assess VHS & RA, it is important to note that the organization acquiring the properties under this program is an organizational unit within the Federal Government. In a program with similar participants, nonprofit organizations and elements of both the State and Federal Governments, involving the sale of vendee properties to organizations assisting homeless veterans, the Secretary has determined that reasonable consideration for such properties must equal at least one half of the VA list price. In view of the Secretary's discretionary authority to sell such properties for such prices as the Secretary deems reasonable, 38 U.S.C. § 1820(a)(5), and the established precedent as to the price assessed certain nonprofit organizations, we believe that a price consistent with that policy would be legally permissible and appropriate.

5. The issue of whether conveyancing or other documents associated with the conveyance must contain use restrictions, similar to those included in the transfer of vendee properties for the assistance of homeless veterans, must be reviewed in light of the statute which enables VHS & RA to acquire the properties in question. The only discernible condition imposed relates to the requirement that upon acquisition the properties shall be altered to comply with standards relative to resistance to fire, earthquake, and other natural disasters. (38 U.S.C. § 5005(a).)

HELD:

The Secretary has the authority to acquire properties held in the vendee property inventory for use by VHS & RA as medical related facilities. Transfer of such properties must include appropriate consideration, and conveyancing documents need not contain any use restrictions as conditions to the transfers.

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