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Vet. Aff. Op. Gen. Couns. Prec. 92-90

**TEXT:**

Application of Manufactured Home Downpayment Requirement to Continuation of Liability Cases

**QUESTION PRESENTED:**

Is the new loan made by a holder of a VA manufactured home loan under the continuation of liability regulation subject to the 5 percent downpayment requirement?

**COMMENTS:**

1. VA is authorized to guarantee a loan made to a veteran for the purchase of a manufactured home. 38 U.S.C. § 1812. In order to qualify for guaranty, the loan must comply with the terms and conditions stated in the statute and applicable regulations. One such condition is that the loan may not exceed 95 percent of the purchase price of the property securing the loan. 38 U.S.C. § 1812(c)(5). This, in effect, requires the veteran to make a 5 percent downpayment.

2. Generally, when a VA guaranteed loan is in serious default, the loan holder terminates the loan through the appropriate legal procedure. The security is sold at a liquidation sale. The holder then submits an accounting to VA showing the total indebtedness plus allowable costs and charges, minus the greater of the proceeds from the liquidation sale or the VA minimum credit based on the net value of the security. Any difference represents the holder's allowable loss which VA will pay the holder, subject to the limits of the guaranty.

3. By regulation, VA has provided for an alternate procedure for a manufactured home loan claim known as continuation of liability. 38 C.F.R. § 36.4283(f)(3). Under this regulation, if VA approves, the loan holder may resell the security for the previously terminated VA guaranteed loan under a new note and security agreement. The purchaser need not be a veteran. The VA will indemnify the loan holder against loss on the new loan. VA's liability under this indemnity agreement is limited to the amount of VA's guaranty on the prior loan. 38 C.F.R. § 36.4283(f)(3)(i). If, however, the holder sold the security for less than the outstanding balance on the old loan, VA may pay a partial claim for the holder's loss on the old loan. In that case, VA's liability on the new loan is limited to the difference between VA's maximum guaranty liability on the original VA loan and the amount of the partial claim paid. 38 C.F.R. § 36.4283(f)(3)(ii).

4. The 5 percent downpayment requirement applies to a loan "guaranteed under ... section 1812 of title 38, United States Code ...." 38 U.S.C. § 1812 (c)(5). Continuation of

liability is a method for VA to reduce its guaranty payment on a terminated manufactured home loan. The new loan is not a guaranteed loan to a veteran under 38 U.S.C. § 1812. Rather, it is subject to an indemnity agreement issued under the regulation. Although 38 C.F.R. § 36.4283(f)(3)(iv) makes the new loan subject to certain provisions of section 1812; e.g., credit worthiness, loan term, and interest rates, such loan is not otherwise governed by that section of the code.

5. The requirement for a 5 percent downpayment on a manufactured home loan was enacted by Public Law 100-198. Our review of the legislative history shows that the Congress required this downpayment in the belief that a downpayment "reduces the likelihood of default" and, in the event of default, would "reduce the likelihood that the lender or taxpayer will suffer a loss because the outstanding loan balance exceeds the value of the property." Senate Report 100-204, 100th Cong., 1st Sess. (1987) at 38.

6. Obtaining a downpayment on the new loan would certainly be consistent with the objectives stated in the legislative history. We must note, however, that in the case of this new loan for the resale of the security, VA is already liable as a result of the prior loan default. If the holder does not sell the unit, VA will be required to pay an immediate claim. Thus a downpayment requirement could be counterproductive. Rather than reducing future losses, the need for a downpayment may impede the resale of the security and cause a claim to be paid immediately.

7. In this regard, an analogy can be drawn to a vendee loan. A "vendee loan" is a sale by VA on credit terms of a conventionally built home acquired following the foreclosure of a VA guaranteed home loan. The acquisition and sale of a conventional home by VA serves a similar purpose to the continuation of liability arrangement for a manufactured home. Public Law 100-198 also imposed a downpayment requirement on a vendee loan. "It ... quickly became apparent to everyone that the downpayment requirement on vendee loans was a mistake ... the downpayment requirement ... reduced sales of already difficult to sell foreclosed properties." Cong.Rec. (daily ed. Feb. 17, 1988) at H343 (statement of Rep. Solomon). See also: statement of Rep. Kaptur, id. at H344; statements of Sens. Cranston and Murkowski, id. (Feb. 1, 1988) at S364- 365. Therefore, about 2 months later, the Congress waived a downpayment on a vendee loan in a case where the Secretary determines making a larger loan is necessary to market the property competitively. Pub.L. No. 100-253, § 2, now codified at 38 U.S.C. § 1833 (a)(4)(B)(ii).

8. As noted above, a continuation of liability new loan is neither a guaranteed manufactured home loan nor a vendee loan. It is, however, similar in purpose to a vendee loan. Although there is no direct legislation or legislative history related to a continuation of liability loan, we believe the congressional intent with regard to a vendee loan can be inferred to apply to a continuation of liability loan. While we believe it would be consistent with the congressional intent for VA to require a downpayment on continuation of liability loan if it was possible to still market the property competitively, there is no statutory mandate for a downpayment.

**HELD:**

A loan covered by an indemnity agreement from VA in connection with the resale of the security for a defaulted guaranteed manufactured home loan by the loan holder, pursuant to 38 C.F.R. § 36.4283(f)(3), is not subject to the 5 percent downpayment requirement applicable to a VA guaranteed manufactured home loan. 38 U.S.C. § 1812 (c)(5). Nevertheless, it would be consistent with the legislative intent of the VA home loan statute to obtain a downpayment when doing so still permits the property to be marketed competitively.

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