



U. S. DEPARTMENT OF VETERANS AFFAIRS
Regional Office, Fort Snelling
1 Federal Drive
St. Paul, MN 55111-4050

February 26, 2001

REGIONAL LOAN CENTER MEMORANDUM NO. 01-06

TO: ALL LENDERS, HOLDERS, SERVICERS, AND BROKERS

SUBJ: RELEASE OF VETERANS FROM LIABILITY TO VA

INTRODUCTION

The St. Paul VA Regional Loan Center would appreciate your cooperation in helping your customers avoid a financial disaster.

Customers come to you for professional assistance in selling their home/relocating/etc., and rely on your advice. Please counsel them to condition their listings and sales contracts on VA's acceptance of a release of liability when selling their home by assumption. Also, please recommend that an assumption clause be placed in any conveyance deed involving a VA-guaranteed or direct loan.

The procedures and benefits of a VA release of liability apply to veterans or non-veterans who:

1. Purchased their home with a VA-guaranteed loan.
2. Obtained a home loan made directly by VA.
3. Assumed a VA-guaranteed or direct loan.

Inquiries pertaining to VA-guaranteed loan assumptions secured by properties located in Illinois, Wisconsin, Missouri, Iowa, Nebraska, Minnesota, North Dakota, South Dakota, and Kansas should be forwarded to this office.

THE PROBLEM

When a purchaser obtains a VA-guaranteed or VA direct loan, he or she becomes liable to the United States Government. This liability is NOT automatically released when the property is sold without paying off the existing mortgage. When an assumption is completed with no release of liability, the former owner loses control over the loan and the property. If the purchaser or any subsequent assumer defaults on the loan, the original owner may be held liable for any claims paid by VA. These debts can be as high as \$50,750 under the existing guaranty limits.

QUALIFIED ASSUMPTION LOANS

If the commitment approving a VA loan was issued on or after March 1, 1988, or a VA direct loan was closed after January 14, 1989, the law requires that the owner obtain a release of liability through the loan holder prior to an assumption. In addition, a one-half percent funding fee must be paid at the time the assumption is completed. These loans are easy to identify because the instruments contain the statement, "THIS LOAN IS NOT ASSUMABLE WITHOUT THE PRIOR APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT" in large type.

Failure to obtain a release on these loans could force the holder to exercise the "Due on Sale" clause in the loan instruments. The purchaser could be required to pay the loan in full or face immediate foreclosure, even if the payments are current. The holder will approve a release if the following three conditions are met:

1. The payments on the loan are current or will be brought current at closing.
2. The purchaser is a good credit risk and has the ability to maintain payments on the loan.
3. The purchaser agrees to assume the veteran's liability to the Government.

If the holder denies the request for release, the seller may appeal directly to VA. The seller should contact the loan holder for information on how to apply for a release of liability.

FREELY-ASSUMABLE LOANS

If the commitment approving a VA loan was issued before March 1, 1988, a release of liability must be requested directly from VA. The release is not required for an assumption to be valid, but it is necessary to protect the seller. VA will approve a seller's request for a release of liability if the same three requirements which apply to qualified assumption loans are satisfied.

To be adequately protected, the seller must insert in the sales contract that the buyer agrees to assume the seller's obligation to indemnify VA for any losses. The contract should be contingent upon approval of a release of liability by VA. It is also recommended that the seller apply for a release of liability to the holder.

At settlement, the buyer should be required to execute all documents necessary to legally assume the seller's liabilities.

RETROACTIVE RELEASES

Sales are sometimes completed before an application for release has been approved or even submitted. It is possible for VA to approve a retroactive release of liability if all of the conditions for a standard release are met.

As a practical matter, it can be very difficult to get a buyer to agree to assume liability after the sale is completed. The inclusion of an assumption clause in the recorded conveyance deed will permit VA to grant the retroactive release if all other conditions are met. It may also provide the seller with some measure of protection even if VA denies the release. Sample assumption clauses are attached.

TIMELINESS

It is understood that prompt processing of release requests is important to you and the seller. Loan holders are expected to process a release request within 45 days after a complete package is received. If VA is processing it, every effort will be made to match this time frame and to expedite special cases. You play an important role by helping your customer to put together a complete application package. Please bring any undue delays by loan holders or VA to the attention of the Loan Administration Officer (261) at the above address.

/S/JON H. HELGASON for
D. F. MUNRO
Loan Guaranty Officer

Attachment: Sample Clauses

SAMPLE CLAUSES

Guaranteed Loan Assumption Clause (Mortgages *before* March 1, 1988)

Subject to that certain Mortgage dated _____, Executed by _____, as Mortgagors, to _____, as Mortgagee, in the original amount of \$_____, which Mortgage was duly (*recorded/filed*) in the Office of the _____ book _____ of _____ on page _____ (or as Document No. _____) and which Mortgage was duly guaranteed by the Department of Veterans Affairs under the provisions of 38 USC Chapter 37, and which Mortgage the grantees herein assume and agree to pay, and said grantees also agree to assume and pay the obligations of _____ (*veteran*) under the terms of the instruments creating the loan to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty of the indebtedness mentioned above.

Guaranteed Loan Assumption Clause (Mortgages *after* March 1, 1988)

Grantees herein, as part of the purchase price and consideration for this deed, assume and agree to pay the indebtedness evidenced by that certain mortgage made from _____ (*original buyer*) to _____ (*original lender*), which mortgage is recorded in the office of _____, in book _____ and page _____. And for the same consideration Grantees hereby assume the loan to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty of the indebtedness mentioned above. This liability to the Department of Veterans Affairs is under the authority of Chapter 37, Title 38 of the United States Code, and supersedes any State or local law barring or limiting deficiencies following foreclosure of real property.

MANUFACTURED HOME ASSUMPTION CLAUSE

Subject to that certain Security Agreement dated _____, Executed by _____ as debtors, to _____, as secured party, in the original amount of \$_____, which security interest was duly (*recorded/filed*) in the office of the _____ of _____ County, State of _____, on _____, with filing number _____ and which security instrument was duly guaranteed by the Department of Veterans Affairs under the provisions of Section 3712, Title 38 USC, and which Security Agreement the grantees herein assume and agree to pay, and said grantees also agree to assume and pay the obligations of _____ under the terms of the instruments creating the loan to indemnify the Department of Veterans Affairs to the extent of any claim payment arising from the guaranty of the indebtedness above mentioned.