

TITLE DOCUMENTATION OF HOA MATTERS IN FLORIDA

1. Purpose. This Circular provides guidance on the submission of title documents to VA's property management contractor when conveying a property in the State of Florida to VA. The guidance below corrects and amends the previous Circular 26-15-26.

2. Background. As part of conveying a property to VA, it is necessary to provide proper documentation so that VA can conclude that the title is in accordance with Title 38, Code of Federal Regulations, section 36.4323(d)(5)(i)(B); i.e., that title vested in VA is such as "would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated." This usually involves providing an owner's title insurance policy with no exclusions, other than for taxes that have not yet been billed, but may be accrued against the property.

3. Florida Statutory Revisions. Under Florida statutes, FL 718.116 (condominiums), and 720.3085 (Planned Unit Developments (PUDs)), as amended, if the Home Owner Association (HOA) is properly named in the foreclosure, a mortgagee, or its assignees or successor in interest, is only required to pay the lesser of either the past due HOA amounts which accrued or came due during a fixed period of time immediately preceding the acquisition of title, or one percent of the original mortgage debt. The fixed period is 12 months for a condominium, or a property in a PUD. In order to avoid unlimited liability for delinquent HOA dues and assessments, all foreclosures commenced on or after July 1, 2008, should have named existing HOAs in the foreclosure complaints.

4. Title Policy Exclusions. Previously, VA had received numerous title insurance policies containing Schedule B exclusions from coverage for "any" assessments related to existing HOAs. The exclusions are appearing even when there is no clear indication the property is subject to HOA assessment, and they give the appearance that a lien may exist without providing any details. Such a title insurance policy is not acceptable to VA under the standard cited in 38 CFR 36.4323(d)(5) as described above.

5. Title Package Standards. Effective as of the date of this Circular, title packages for the State of Florida insuring foreclosed properties must include a statement by the foreclosure attorney on his or her letterhead that either there is no active HOA for the subject property, or that the existing HOAs have been identified and named in the foreclosure complaint. Title packages for the State of Florida insuring properties whose loans terminated in other ways, i.e., a deed in lieu (DIL), must include a statement on behalf the conveying servicer that either there is no active HOA for the subject property, or that existing HOAs have been identified and all HOA dues have been paid through the date which is 30 days after the transfer of custody. If a particular property is in an HOA, the title documentation must also include either:

a. A recorded satisfaction of liens releasing all notices of liens filed of record and a letter from the management company of the HOA stating that there are no association fees due against the property; or

b. Schedule B of the owner's title insurance policy must be free and clear of any exclusions for potential HOA liens.

6. Advances for Delinquent HOA Dues and Condominium Fees. This Circular constitutes prior approval, as required by 38 CFR 36.4314(e), to advance funds to pay delinquent condominium fees and HOA dues to the extent allowed by Florida law to obtain clear title following foreclosure. When naming the HOA in the foreclosure action serves to limit the maximum payable after foreclosure to the lesser of one percent of the original mortgage debt, or the amount which came due no more than 12 months immediately preceding foreclosure, VA will allow no more than the statutory maximum or the actual amount due, whichever is less. Moreover, fees and charges otherwise allowable that accrue after the date specified in 38 CFR 36.4314(f)(2) may not be included in a claim under the guaranty, nor may the claim exceed VA's maximum guaranty.

7. Questions. Questions may be directed to Cheryl Amitay at Cheryl.Amitay@va.gov.

8. Rescission: This Circular is rescinded January 1, 2017.

By Direction of the Under Secretary for Benefits

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