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CHAPTER 8. FORECLOSURE

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8.01 FORECLOSURE (38 CFR 36.4322)

a. Servicers are delegated the authority to complete all termination actions on a VA-guaranteed loan. When a delinquency cannot be resolved, and the loan has been deemed insoluble or the property has been abandoned, the servicer should proceed with foreclosure action. VA encourages servicers to continue loss mitigation efforts even after foreclosure proceedings have commenced.

b. At any time prior to the liquidation sale, servicers must accept funds to cure a delinquency unless the servicer obtained prior written approval from VA, or if reinstatement of the loan would adversely affect the dignity of the lien or is otherwise precluded by state law (38 CFR 36.4309 (h)).

8.02 SERVICER REPORTING REQUIREMENTS

a. Foreclosure events reported on delinquent loans provide a snapshot of how each loan is performing and allows VA to forecast future liabilities. The following events are required to be reported by the servicer on delinquent VA-guaranteed loans. Submission of several events below requires action by the VA-assigned technician:

1. Foreclosure Referral: Services must submit the event to notify VA that they have referred

this loan to an attorney to begin foreclosure action on a delinquent loan.

2. Foreclosure Sale Scheduled: Servicers must submit the event to notify VA that a

foreclosure sale has been scheduled.

3. Results of Sale: Servicers must submit the event to advise VA of the results of the

foreclosure sale.

4. Confirmed Sale Date with No Transfer: Servicers must submit the event to notify VA on

all loans located in a confirmation state where they have received confirmation, but do not wish to convey the property to VA.

5. Transfer of Custody: Servicers must submit the event to notify VA within 15 days of

foreclosure, confirmation of sale, or deed-in-lieu of foreclosure if they wish to convey the terminated property to VA.

6. Invalid Sale Results: Servicers must submit the event to notify VA if they have determined

that the foreclosure sale was invalid so the property can be removed from VA’s inventory, if conveyed.

7. Improper Transfer of Custody: Servicers must submit the event to notify VA if custody

was transferred in error so the property can be removed from VA’s inventory.

8.03 PRE-FORECLOSURE REVIEW

a. Prior to loan termination, VA conducts a pre-foreclosure review of the loan to ensure that the borrower(s) have received every opportunity to retain homeownership or avoid foreclosure. When a Foreclosure Sale Date Scheduled event is reported by a servicer, the VA Loan Electronic Reporting Interface (VALERI) determines if a pre-foreclosure review has been completed in the previous 6 months. If a pre-foreclosure review has not been completed, VALERI will automatically open a pre-foreclosure review process, which requires technician review and recommendation. If a pre-foreclosure review has been completed within the previous 6 months, VALERI will not open the process.

b. VA loan technicians have the ability to manually open a pre-foreclosure review process if they have been notified of a pending foreclosure sale, as long as the loan is in a guaranty issued status and being reported in default by the servicer. During VA’s review, if it is determined the loan is soluble; the assigned technician will proceed with taking action for possible loss mitigation or alternative actions. Refer to Chapter 5, Loss Mitigation, of this Manual for additional information on loss mitigation options.

# 8.04 NOTICE OF VALUE (NOV) AND EXTENSIONS

a. At least 30 days prior to the scheduled or anticipated date of the foreclosure sale, the servicer must request that VA assign an appraiser to conduct a liquidation appraisal. If the property is vacant, the servicer must provide the appraiser access to the property. The Construction and Valuation (C&V) Section at the Regional Loan Center (RLC) of jurisdiction where the property is located, may reach out to the VA-assigned technician for assistance in contacting the servicer for access to vacant properties. If state laws prevent the servicer’s ability to provide access to a vacant property, the appraiser must contact the C&V Section of the RLC in the jurisdiction where the property is located for approval to conduct an exterior-only report. The liquidation appraisal is valid for 180 calendar days from the date of issuance; however, the C&V section may specify a shorter validity period if rapidly-changing market conditions exist in the area. Failure to order the appraisal timely, or a delay in providing the appraiser access to a vacant property, may delay the completion of the foreclosure sale.

b. If the servicer has Staff Appraisal Processing Program (SAPP) authority to process liquidation appraisals under 38 CFR 36.4348, the appraiser will forward the liquidation appraisal report directly to the servicer for determination of fair market value. If the servicer does not participate in SAPP, the appraiser will forward the liquidation appraisal report to the RLC of jurisdiction, for determination of fair market value. If the servicer learns of any material damage to the property after the appraisal has been completed, but prior to the foreclosure sale, the servicer must contact the C&V Section of the RLC of jurisdiction for specific guidance.

c. If the NOV will expire within 14 days prior to the foreclosure sale date, the servicer may request an extension of the NOV by contacting the VA-assigned technician. A Servicing Officer or Loan Administration Officer will generally grant the request by extending the NOV expiration date in VALERI as long as the following conditions apply:

1. The NOV extension request is received before the foreclosure sale.

2. The request is received prior to the NOV expiration date.

3. The property was vacant and access was gained.

4. No known extenuating circumstances exist that may diminish the value of the property.

d. Any requests that fall outside of these general requirements will be reviewed by VA on a case-by-case basis. If VA denies the servicer’s request to extend the validity period of the NOV, the servicer must order a new VA appraisal.

e. The servicer will compute and determine the bid type and amount by taking the fair market value of the property minus estimated costs incurred by VA in acquiring and disposing of the property. The number to be subtracted from the fair market value will be calculated by multiplying the fair market value by the current Net Value cost factor. The Net Value cost factor is published by VA in the Federal Register per 38 CFR 36.4301. Current and past rates for the Net Value cost factor can be viewed on the VALERI Internet site located at <http://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp>.

f. The servicer is required to follow VA requirements and comply with all federal, state, county and local foreclosure laws when scheduling and carrying out a foreclosure sale. Once the foreclosure sale is complete, the servicer must report the Results of Sale event in VALERI. This event will terminate all loans that are in a “guaranty issued” status except those that are located in a Confirmation/Ratification state. Guidance information for each state can be found in Appendix G, State Foreclosure Process and Statutory Bid Information.

g. VA also requires servicers to report the type of foreclosure, either judicial or non-judicial, in VALERI. The type of foreclosure is defined by state and county law and is required to determine what fees are allowable at the time of claim.

8.05 PRE-FORECLOSURE DEBT WAIVER (38 CFR 36.4326 (e))

a. A pre-foreclosure debt waiver is a complete release of VA’s right to collect a debt from the obligor, but does not restore the Veteran’s entitlement. VALERI automatically opens a Pre-Foreclosure Debt Waiver Review process for all type 2 loans or any assumed type 6 loans for potential waiver of debt. The following explains the difference between a type 2 and type 6 loan:

1. Loan Type 2. If the security for the loan is a manufactured home and the loan was

processed under the provisions of Title 38 U.S.C., Section 3712, or if the security for the loan is not a manufactured home and the loan closed prior to January 1, 1990.

2. Loan Type 6. If the security for the loan is not a manufactured home and the loan closed

on or after January 1, 1990.

b. A waiver of the debt may be warranted in instances where the borrower’s financial ability would prohibit them from repaying any debt established within a 6-year period.

c. VA may deny a pre-foreclosure debt waiver in cases of fraud, misrepresentation, or bad faith:

1. Fraud and/or willful misrepresentation may have occurred when the original lender

obtained guaranty as a result of willful and material fraud or misrepresentation (e.g., borrower

hiding unacceptable credit or submitting materially false information such as income, credit, or deposit verification).

2. Bad faith occurs when a borrower refuses to work with the servicer and VA to pursue a

loss mitigation option and is in willful default. In addition, should VA discover there was an unauthorized transfer of ownership, or the borrower allowed the transfer of ownership to an unqualified party, these situations could be reviewed as possible reasons to establish a bad faith debt (e.g., borrower does not have a financial hardship; however, due to declining values on the VA-guaranteed property, the borrower purchased a new property within the same area, moved out and willfully defaulted on the VA home loan that resulted in a termination).

d. These instances above are not necessarily a reason to disallow a pre-foreclosure debt waiver; however, the VA-assigned technician will review each case carefully in order to make a determination and must document the case notes accordingly.

# 8.06 FORECLOSURE BID AND LOAN TERMINATION (38 CFR 36.4322)

a. The servicer calculates the bid amount using the total eligible indebtedness (TEI) included the unpaid principal balance, accrued unpaid interest allowable and charges reasonably necessary associated with the liquidation of the loan. For more information on how TEI is calculated, refer to Chapter 14, Claims, of this Manual.

b. There are two bid types the servicer may determine:

1. Total debt*.* The VA Net Value is greater than or equal to the reported TEI.

2. Net value*.* The VA Net Value is less than TEI.

c. If the net value of the home is $0.00 or less, the servicer should not bid more than the unguaranteed portion of the loan indebtedness at the foreclosure sale unless there are competitive bidders and the servicer wants to acquire the property.