

CHAPTER 20. SERVICING LOANS WITH BANKRUPTCY

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20.01 INTRODUCTION

a. Bankruptcy is a legal process through which a debtor can seek the protection of the bankruptcy court to gain a financial fresh start. The bankruptcy court has the authority to discharge the debtor's personal liability for most debts. The court also has the authority to approve a distribution to creditors from available assets of the debtor's bankruptcy estate. Most consumer bankruptcies will fall under Bankruptcy Code chapters 7 (liquidation) and 13 (repayment plan). Under those chapters, the court designates a trustee to oversee the liquidation and distribution of the debtor's assets and/or the plan for payment to creditors.

b. If a Veteran requests advice on bankruptcy matters from a VA loan technician, the Veteran should be directed to private legal counsel.

20.02 BANKRUPTCY PROTECTION

a. The Bankruptcy Code imposes an automatic stay, which starts at the moment a bankruptcy case is filed and prevents creditors from attempting to collect or enforce a debt against the debtor during the bankruptcy. While the stay is in effect, creditors cannot take any action that could be construed as an attempt to collect a debt, including any actions to initiate or continue foreclosure proceedings on a VA-guaranteed loan. As discussed below, a VA loan technician's ability to service a VA-guaranteed loan during an active bankruptcy is limited due to the possible risk that communications with the borrower could be construed as efforts to collect a debt in violation of the stay.

b. A secured creditor may seek relief from the automatic stay by filing a motion with the bankruptcy court. With a VA-guaranteed loan, a holder/servicer may seek relief from the stay to initiate or continue a foreclosure action. The holder/servicer may proceed only if the court agrees and issues an order granting relief from the stay.

c. If a debtor receives a bankruptcy discharge, the discharge order acts as a permanent injunction/block against a creditor taking action to hold a borrower personally liable for a debt. What can be confusing for a debtor, though, is that the holder/servicer can still enforce its security interest and foreclose on the debtor's home after a discharge, if the loan is in default.

20.03 VALERI BANKRUPTCY REPORTING

a. Mortgage servicers provide information regarding a bankruptcy filing to VA through VALERI. In accordance with 38 C.F.R. § 36.4317(c)(11) and (12), servicers should report the following bankruptcy events in VALERI, when applicable:

1. Bankruptcy Initiated: The date the Veteran files a petition with the bankruptcy court. This event should also indicate the type of bankruptcy filed – chapter 7 or 13.

2. Significant Bankruptcy Event: This may include:

(a) Bankruptcy Case Dismissed. Includes the date of dismissal. When a bankruptcy case is dismissed, it is no longer pending, and the automatic stay is no longer in place.

(b) Motion for Stay Relief Filed. Includes the date a motion for stay relief is filed. The holder/servicer may file a motion with the bankruptcy court to obtain relief from the automatic stay.

(c) Order Granting Relief from Stay. Includes the date the order is entered. A bankruptcy court order has been entered granting a holder/servicer relief from the automatic stay. The holder/servicer may then proceed with foreclosure, if applicable.

(d) Bankruptcy Discharge Entered. Includes the date of the discharge order. When the bankruptcy court enters a discharge order, the borrower is released from personal liability for most debts. The order acts as a permanent injunction/block against a creditor's subsequent efforts to collect, recover, or offset a discharged debt as a personal liability of the borrower. The discharge order, however, does not prevent a holder/servicer from foreclosing if the loan is in default.

20.04 VA BANKRUPTCY LOAN SERVICING

a. Servicing a VA-guaranteed loan includes VA loan technicians attempting/accepting telephone contact with the borrower, emailing the borrower, or sending letters (equity, pre-foreclosure, loss mitigation, etc.) to the borrower. Before servicing a loan, VA loan technicians must check VALERI loan indicators or VALERI events to determine if the borrower has filed for bankruptcy protection.

b. If the VALERI bankruptcy indicator is checked, VA loan technicians review VALERI events to determine

- the type of bankruptcy filed (chapter 7 or chapter 13),
- when the bankruptcy was filed, and
- whether the bankruptcy has been dismissed or discharged.

1. If VALERI entries show a bankruptcy filing date and a subsequent dismissal or discharge, VA loan technicians will service the loan just like they would any other loan.

2. If VALERI entries show a bankruptcy filing date and chapter, but no indication of a subsequent dismissal or discharge, a VA loan technician's review will proceed as follows:

(a) Chapter 7 indicated:

(i) If the Chapter 7 bankruptcy was filed within the four months prior to the VA loan technician's review date, the VA loan technician may assume the bankruptcy is still active. Limited loan servicing may be performed as described in paragraph c, below. The VA loan technician will schedule a status check as set forth in paragraph d.1.(b), below.

(ii) If a Chapter 7 bankruptcy was filed between four and twelve months prior to the VA

loan technician's review date (meaning more than four months have passed since the filing date, but a year has not), the VA loan technician will log the loan on the SharePoint Prior Bankruptcy Servicing Request Log for NPG to determine if the borrower is still in an active bankruptcy. Pending the bankruptcy status update from NPG, the VA loan technician may perform limited loan servicing as described in paragraph c, below.

(iii) If a Chapter 7 bankruptcy was filed more than one year prior to the VA loan technician's review, the loan may be serviced.

(b) Chapter 13 indicated:

(i) If the Chapter 13 bankruptcy was filed within the six months prior to the VA loan technician's review date, the VA technician may assume the bankruptcy is still active. Limited loan servicing may be performed as described in paragraph c, below. The VA loan technician will schedule a recheck as set forth in paragraph d.1.(b), below.

(ii) If a Chapter 13 bankruptcy was filed between six months and five years prior to the VA loan technician's review date (meaning more than six months have passed since the filing date, but five years have not), the VA loan technician will log the loan on the SharePoint Prior Bankruptcy Servicing Request Log for NPG to determine if the borrower is still in an active bankruptcy. Pending the bankruptcy status update from NPG, the VA loan technician may perform limited loan servicing as described in paragraph c, below.

(iii) If a Chapter 13 bankruptcy was filed more than five years prior to the VA loan technician's review, the loan may be serviced.

3. If VALERI entries show only a discharge or dismissal event and no bankruptcy filing event, the VA loan technician will review the VALERI notes for any indication there is a pending bankruptcy. If there is no indication of a pending bankruptcy, the loan may be serviced.

c. If the borrower is in an active bankruptcy, then the VA loan technician's ability to service the loan is limited. The VA loan technician will proceed as follows:

1. The VA loan technician will not attempt to contact the borrower.

2. If the borrower calls VA:

(a) The VA loan technician will read a standard disclaimer explaining that any information VA provides to the borrower should in no way be interpreted as an attempt to collect a debt or as legal advice relating to their bankruptcy. Standard disclaimer:

(i) This is not an attempt to collect a debt. If you are currently in bankruptcy or have received a bankruptcy discharge, this communication is not an attempt to collect a debt but is for informational purposes only.

(b) The VA loan technician can only provide the borrower with general information regarding their loan. General information regarding the loan includes:

- (i) current servicer name, address, and phone number
- (ii) VA loan number
- (iii) loan origination information
- (iv) amount owed on the loan

(c) The VA loan technician will direct the borrower to consult with the borrower's bankruptcy attorney for any other information. The VA loan technician may also direct the borrower to VA's website that includes options for trying to avoid foreclosure, which the Veteran may discuss with their bankruptcy attorney.

3. If the borrower advises the VA loan technician that their bankruptcy is no longer active:

(a) The VA loan technician should ask the borrower to submit a copy of the court's dismissal or discharge; or

(b) If the borrower does not have a copy of the court's dismissal or discharge, the VA loan technician will log the loan on the SharePoint Prior Bankruptcy Servicing Request Log for NPG to determine if the borrower is still in an active bankruptcy, or if a dismissal or discharge has been entered.

(c) Once the bankruptcy court's dismissal or discharge is received by the VA loan technician, the loan may be serviced. The VA loan technician may perform limited loan servicing pending receipt of the dismissal or discharge.

d. For loans listed by VA loan technicians on the SharePoint Prior Bankruptcy Servicing Request Log, the NPG will review the Public Access to Court Electronic Records (PACER) database or other reliable source, e.g. Westlaw, for bankruptcy case information. The NPG will then update the log with available discharge/dismissal/reaffirmation date(s). The NPG's research of a bankruptcy case may take up to 13 calendar days.

1. Upon receipt of NPG research findings, VA loan technicians will update VALERI accordingly.

(a) If the bankruptcy case has been dismissed or discharged, the VA loan technician may service the loan.

(b) If the bankruptcy case remains active, the VA loan technician may perform limited servicing as explained in paragraph c, above, and will set a VALERI task to recheck for a dismissal or discharge in VALERI events at:

- (i) 120 days for a chapter 7, or

(ii) 180 days for a chapter 13.

2. VA loan technicians may resubmit the loan on the SharePoint Prior Bankruptcy Servicing Request Log if, on the day of the scheduled recheck, VALERI does not reflect a discharge or dismissal. The steps in this paragraph d are then repeated until the VA loan technician receives discharge or dismissal information.

3. If there is an urgent need for information regarding the status of the Veteran's bankruptcy, such as a sale is pending or the borrower needs to get approval to lock in an interest rate, the VA loan technician should escalate the case to the Assistant Director, Loan Administration Field, who will request an expedited review from the NPG.

e. Any specific questions relating to servicing a loan with a prior bankruptcy should be submitted through the Loan Administration Officer to the Assistant Director, Loan Administration Field.