

CHAPTER 11. PROPERTY CONVEYANCE

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### 11.01 PROPERTY CONVEYANCE (38 C.F.R. §36.4323)

a. Servicers have the option to transfer custody of a property to the Department of Veterans Affairs (VA) after a loan is terminated through foreclosure, or deed-in-lieu (DIL) of foreclosure. All transfers are conditional upon Loan Guaranty National Practice Group (NPG) approval of title. The Transfer of Custody (TOC) event must be submitted to VA within 15 days of loan termination. If the TOC event is not reported within the allowable 15-day timeframe, VALERI will reject the event and the servicer may submit an appeal for VA consideration. Refer to the VALERI Servicer User Guide for more information on the servicers ability to appeal rejected Transfers of Custody.

b. If all VA regulatory requirements are met at the time the TOC event is submitted, VALERI will automatically open the Review Non-Routine Acquisition process in the VA-assigned technician's workbasket for review.

c. Under 38 C.F.R. §36.4323, servicers bear responsibility for any loss due to damage or destruction of the property or personal injury sustained in respect to such property from the date of acquisition by the servicer to the date such risk is assumed by VA. Risk is assumed by VA on the day successful electronic acceptance of the "Transfer of Custody" event is indicated in the VALERI application. However, successful submission of the Transfer of Custody (TOC) event does not mean VA has approved acceptance of the property. All transfers are conditional upon Loan Guaranty National Practice Group (NPG) approval of title.

### 11.02 ELIGIBILITY TO TRANSFER CUSTODY

a. Prior to initiating a TOC event, servicers must determine eligibility to transfer custody. A servicer may initiate a TOC event when all of the following conditions are met:

1. The loan was terminated through a foreclosure or DIL.
2. A value greater than zero has been established via a valid VA appraisal.
3. If the net value of the property is less than the unguaranteed portion of the indebtedness (i.e., the total eligible indebtedness, minus VA's maximum claim payable under the guaranty), the servicer must write off all indebtedness not covered by the maximum claim payable and the acquisition payment and must send a deficiency waiver notice to the borrower once the claim is paid. If a bankruptcy discharge has previously been obtained on the loan, notice of the deficiency waiver is not required.
4. The servicer did not rent the property to a new tenant, or extend the term of an existing tenancy, on other than a month-to-month basis during an after-sale redemption period.
5. The title of the property is or will be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is located.

6. There has been no breach of any conditions affording a right to the exercise of any reverter.

7. If a partial release of security was granted on the property, there was full compliance with the requirements for partial releases of security as described in 38 C.F.R. §36.4827.

### 11.03 TRANSFER OF CUSTODY (TOC) EVENT REPORTING

a. If the servicer chooses to transfer custody of the property, they must report the TOC event to VA within 15 days of loan termination. Loan termination is defined as:

1. Foreclosure: The date of legal termination as defined under state law.
2. DIL: The date the deed is recorded or the date the deed is sent for recordation.

b. When a loan is terminated in a confirmation/ratification state, the servicer must provide the date of confirmation/ratification in the TOC event.

c. The servicer is responsible for providing all insurance and property tax information, including all taxing authority property identification numbers. It is important to note that the holder of the loan must pay any taxes, special assessments, or ground rents due within 30 days after the date of successful transfer of custody to VA.

d. There could be lengthy delays, outside the servicer's control, between the foreclosure sale and transfer of custody. If the servicer plans to convey the property to VA, VA may require the servicer to order a new VA appraisal and/or provide a copy of the most recent property inspection, based on the circumstances of the case. The appraisal would be completed at the servicer's expense.

e. Each TOC submitted in VALERI is evaluated against VA regulatory requirements. VALERI rejects the TOC event if any of the following conditions apply:

1. The loan is not guaranteed.
2. The loan is not terminated (i.e., the servicer did not report the appropriate event that identifies a loan termination in VALERI).
3. The successful bidder specified on the Results of Sale event was "third party."
4. The servicer reports the TOC event 16 or more days from the date of loan termination.

f. Servicers can review the rejected TOC events on the Events with Fatal Rules report or on the Events Status report.

#### 11.04 ACCEPTANCE OF PROPERTIES

a. Conveyance of properties to the Secretary of Veterans Affairs is addressed in Title 38 C.F.R. §36.4323, titled “Election to Convey Security.” The regulation provides that the conveyance is subject to a number of provisions, particularly that the holder will convey the title to the Secretary of Veterans Affairs via a special warranty deed and must provide evidence to the Secretary of acceptability of title (which need not be provided if the transfer is via a general warranty deed).

b. Additional State Transfer Requirements. In some states, both the Grantor (seller) and the Grantee (buyer) are required to execute a transfer deed. Additionally, some states require execution of other documents by the Grantor and/or the Grantee. Sometimes these documents must accompany the transfer deed when it is submitted for recordation. Some documents are required to establish status and value for future real estate taxes, while others may relate to potential taxable income from the sale of real estate. VA will sign such documents when they are clearly in conformance with their stated purposes (e.g., to establish real estate tax value). However, VA’s signature does not deem acceptance of a property. Furthermore, when there are questionable items shown, such as a report that a deed to VA is a DIL of foreclosure, although such a deed should be to the loan holder, with a subsequent transfer deed to the Secretary of Veterans Affairs, then VA may seek clarification from the appropriate NPG prior to execution of the document. The following are examples of uncommon document requirements:

1. Kentucky. VA is required to sign a special warranty deed to reflect acceptance of the deed transfer to comply with state recordation requirements.

2. California. Per Section 27281, California Government Code, VA is required to sign a Certificate of Acceptance to transfer the property to a political corporation or governmental agency for public purposes. Conveyances to VA are actually made to the Secretary of Veterans Affairs as an officer of the United States, as part of a salvage operation under the Home Loan Guaranty program. Therefore, such properties do not fit this section of the California Government Code, which requires either a resolution of acceptance on the part of the political corporation, or else a certificate of acceptance substantially in the form provided in the code. Accordingly, such a certificate is not necessary. However, if a local jurisdiction demands such a form in order to record a deed involving the Secretary, then authorized VA officials will sign a certificate to include the qualifying language: “is accepted if the Grantee determines the property meets the requirements of part 36 of Title 38, Code of Federal Regulations. The Grantee consents to the recordation thereof by its duly authorized officer. Nothing herein waives the Grantee’s authority to determine that the property is not acceptable pursuant to 38 C.F.R. §36.4323.”

3. Delegated Signature Authority. Under 38 C.F.R. §36.4345, “Delegation of Authority,” employees filling certain positions are authorized to sign documents related to real estate transfers on behalf of the Secretary of Veterans Affairs. For more information on delegated signature authority, refer to Chapter 12 of this handbook.

4. VA Address. For any documents requiring an address for VA, use:

Department of Veterans Affairs  
Loan Guaranty Service  
3401 West End Avenue, Suite 760W  
Nashville, TN 37203

#### 11.05 ACQUISITION PAYMENT CALCULATION

a. VALERI determines the acquisition payment for a loan terminated through a foreclosure sale or DIL of foreclosure based on the net value and the servicer reported total eligible indebtedness.

b. There are two types of acquisition payments the servicer may receive:

1. Total debt. If the net value is greater than or equal to the reported total eligible indebtedness, the acquisition payment is the unpaid principal balance (UPB) as reported in the most recent Delinquency Status Update.

2. Net value. If the net value is less than total eligible indebtedness, the acquisition payment is the net value amount. For more information on the Net Value calculated by VALERI, review Chapter 10.

#### 11.06 ACQUISITION NOTIFICATION

a. The determination of the acquisition payment is posted on the Servicer Web Portal (SWP). For information such as the acquisition amount, certification date, bid type, and disbursement status, servicers may view the Acquisition Payment Status report. Technicians can view and research the payment determination in VALERI in order to address servicer inquiries when funds for an acquisition payment are not received within 14 days after the Financial Management System (FMS) issued a payment transaction number.

b. If an acquisition payment is denied, servicers have 30 days from the denial to exercise the option to appeal a decision. For more information on appeals, refer to Chapter 16.

#### 11.07 SUBMISSION OF INSURANCE POLICIES AND TITLE DOCUMENTS (38 C.F.R. §36.4323)

a. The servicer must submit all required documents to VA's property management contractor within 60 days of loan termination in most jurisdictions. In some cases, due to redemption periods, confirmation hearings after sales, and/or delays in recorders' offices, other timeframes after the sale may apply. A list of required title documents, property management contact information, and allowable timeframes can be located at:

[http://www.benefits.va.gov/HOMELOANS/servicers\\_valeri.asp?expandable=0&subexpandable=4](http://www.benefits.va.gov/HOMELOANS/servicers_valeri.asp?expandable=0&subexpandable=4).

b. The servicer must endorse all insurance policies naming the Secretary as an assured, as his/her interest may appear. If an insurance policy cannot be endorsed, for any reason, the cancellation notice must be included in your title package. If an insurance policy is canceled, servicers must properly account for any refunded premiums.

c. The title policy documentation must insure the Secretary of Veterans Affairs in an amount equal to the consideration for the property. Consideration amounts are defined as the acquisition payment made to the servicer at time of the TOC. VA pays the consideration as net value or the UPB on total debt cases.

d. If the title is not approved, VA's Contract Assurance – Property Management section notifies the servicer and VA-assigned loan technician. Custody of the property is returned to the servicer and a Bill of Collection (BOC) is issued to recover acquisition funds and any other additional costs. For more information on reconveyance, refer to Chapter 12 of this handbook.