

Increases in Allowable Attorney Fees and Changes in Preferred Foreclosure Methods

1. Purpose. The purpose of this Circular is to announce new maximum attorney fees allowable in guaranty claims, and changes in preferred foreclosure methods.

2. Background. Computation of guaranty claims is addressed in Title 38, Code of Federal Regulations (CFR), § 36.4324, which states that one part of the indebtedness upon which the guaranty percentage is applied is the allowable expenses/advances as described in § 36.4314. Paragraph (b)(5)(ii) of that section describes the procedures to be followed in determining what constitutes the reasonable and customary fees for legal services in the termination of a loan. The Secretary of Veterans Affairs annually reviews allowances for legal fees in connection with the termination of single-family housing loans, including foreclosure, deed-in-lieu of foreclosure, and bankruptcy-related services, issued by the Department of Housing and Urban Development (HUD), Fannie Mae, and Freddie Mac. When the Secretary determines that a change in the maximum allowable amount of attorney fees is necessary, a notice is published in the Federal Register with a new table of maximum allowable fees.

3. New Allowable Attorney Fees. Based on increased expenses for foreclosure actions, the Secretary has deemed it necessary to revise the amounts determined to be reasonable and customary for foreclosure legal services, and published a new table in the Federal Register at 78 FR 67465 on November 12, 2013. The attached Exhibit A is a table representing the Secretary's determination of the reasonable and customary cost of legal services for the preferred method of terminating Department of Veterans Affairs (VA) home loans in each jurisdiction under the provisions of 38 CFR § 36.4314(b)(5)(ii). This table is effective for loans terminated on or after December 12, 2013. There is no change to the amounts we will allow for attorney fees for deeds-in-lieu of foreclosure or for bankruptcy relief. We are aware that other ongoing reviews of these fees are being conducted, and will continue to monitor these fees on an annual basis.

4. Loan Termination. The new fees are effective for loans *terminated* on or after December 12, 2013. We consider a loan to be terminated as of the date of the final foreclosure event. Even if the foreclosure started a year or more ago, we will allow the new maximum attorney fee if the loan is terminated on or after December 12, 2013, and the amount actually paid for legal services is equal to or greater than the new maximum amount allowed in that jurisdiction. VA is not a party to contracts between servicers and attorneys, who must resolve any questions regarding billing and payment of fees in the new amounts. The final foreclosure event is published in the "State Foreclosure Process and Statutory Bid Information" table under the "Document Library" on the VA Loan Electronic Reporting Interface (VALERI) webpage, which is available through: http://www.benefits.va.gov/homeloans/servicers_valeri.asp. This is also where the new table for allowable attorney fees may be found, as well as the VALERI Fee Cost Schedule, which will display the new amounts in red type for a period of time.

5. Changes In Preferred Foreclosure Methods. The table in Exhibit A shows the primary method for foreclosing in each State, either judicial or non-judicial, with the exception of those States where either judicial or non-judicial is acceptable. The use of a method not authorized in the table will require prior approval from VA. The new VA table closely mirrors methods for foreclosure allowed by Fannie Mae, with the following exceptions:

a. Hawaii. We determined that in Hawaii the preferred method of foreclosure remains only the judicial method. We are aware that Hawaii has established a new non-judicial foreclosure procedure; however, we believe this new method is not yet well-established enough to provide acceptable title to the real estate community. We will continue to monitor the situation in Hawaii, and will make necessary changes as conditions warrant.

b. Other States. Three other jurisdictions requiring special mention include Oregon, South Dakota, and Nebraska. We continue to prefer the non-judicial method in Oregon and see no need to allow the judicial method on a regular basis. However, we determined that the non-judicial procedure in South Dakota is no longer a preferred method of foreclosure. Also, in the past we routinely allowed either the non-judicial or judicial method of foreclosure in Nebraska. At this time, we are designating non-judicial as the preferred method of foreclosure in Nebraska, although special approval may be requested for a case where judicial foreclosure is deemed necessary.

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

By Direction of the Under Secretary for Benefits

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Director, Loan Guaranty Service

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Table of Allowable Attorney Fees and Preferred Foreclosure Method

Jurisdiction	Non-Judicial Foreclosure	Judicial Foreclosure	Deed-in-Lieu of Foreclosure
Alabama	\$900	N/A	\$350
Alaska	\$1200	N/A	\$350
Arizona	\$925	N/A	\$350
Arkansas	\$1050	N/A	\$350
California	\$1000	N/A	\$350
Colorado	\$1225	N/A	\$350
Connecticut	N/A	\$1700	\$350
Delaware	N/A	\$1350	\$350
District of Columbia	\$600	N/A	\$350
Florida	N/A	\$2250	\$350
Georgia	\$900	N/A	\$350
Guam	\$1200	N/A	\$350
Hawaii	N/A	\$2400	\$350
Idaho	\$1050	N/A	\$350
Illinois	N/A	\$1750	\$350
Indiana	N/A	\$1500	\$350
Iowa	\$850	\$1300	\$350
Kansas	N/A	\$1250	\$350
Kentucky	N/A	\$1700	\$350
Louisiana	N/A	\$1350	\$350
Maine	N/A	\$1750	\$350
Maryland	\$2100	N/A	\$350
Massachusetts	N/A	\$2000	\$350
Michigan	\$1000	N/A	\$350
Minnesota	\$1025	N/A	\$350
Mississippi	\$900	N/A	\$350
Missouri	\$950	N/A	\$350
Montana	\$1000	N/A	\$350
Nebraska	\$900	N/A	\$350
Nevada	\$1100	N/A	\$350
New Hampshire	\$1150	N/A	\$350
New Jersey	N/A	\$2425	\$350
New Mexico	N/A	\$1500	\$350
New York—Western Counties ³	N/A	\$2000	\$350
New York—Eastern Counties	N/A	\$2400	\$350
North Carolina	\$1150	N/A	\$350

Jurisdiction	Non-Judicial Foreclosure	Judicial Foreclosure	Deed-in-Lieu of Foreclosure
North Dakota	N/A	\$1250	\$350
Ohio	N/A	\$1700	\$350
Oklahoma	N/A	\$1450	\$350
Oregon	\$1000	N/A	\$350
Pennsylvania	N/A	\$1650	\$350
Puerto Rico	N/A	\$1500	\$350
Rhode Island	\$1300	N/A	\$350
South Carolina	N/A	\$1650	\$350
South Dakota	N/A	\$1250	\$350
Tennessee	\$900	N/A	\$350
Texas	\$900	N/A	\$350
Utah	\$925	N/A	\$350
Vermont	N/A	\$1700	\$350
Virgin Islands	N/A	\$1800	\$350
Virginia	\$925	N/A	\$350
Washington	\$1000	N/A	\$350
West Virginia	\$1000	N/A	\$350
Wisconsin	N/A	\$1500	\$350
Wyoming	\$1000	N/A	\$350

¹When a foreclosure is stopped due to circumstances beyond the control of the holder or its attorney (including, but not limited to bankruptcy, VA-requested delay, property damage, hazardous conditions, condemnation, natural disaster, property seizure, or relief under the Servicemembers Civil Relief Act) and then restarted, VA will allow a \$350 restart fee in addition to the base foreclosure attorney fee. This fee recognizes the additional work required to resume the foreclosure action, while also accounting for the expectation that some work from the previous action may be utilized in starting the new action.

²VA will allow attorney fees of \$650 (Chapter 7) or \$850 (initial Chapter 13) for obtaining bankruptcy releases directly related to loan termination. For additional relief filed under either chapter, VA will allow an additional \$250.

³Western Counties of New York for VA are: Allegany, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Steuben, Wayne, Wyoming, and Yates. The remaining counties are in Eastern New York.