

CHAPTER 3. GENERAL LOAN SERVICING

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3.01 INTRODUCTION

a. Servicers are responsible for reporting loan events electronically on all current loans to VA throughout the life of the loan in accordance with 38 C.F.R. 36.4317. Late reporting is a regulatory infraction that may affect a servicer's tier ranking. Occasionally, servicers may need to report information through email, telephone, or letter. Information may also be received directly from borrower(s) contacting VA regarding their loan such as escrow inquiries, payment disputes, etc.

b. Servicers must service VA loans within the requirements of VA regulations. Each servicer determines the best approach to fit individual borrower circumstances. Additionally, servicers are required to comply with all applicable local, State, and Federal laws, such as the Real Estate Settlement Procedures Act (RESPA), as amended, and regulations governing the VA Home Loan program.

3.02 SERVICER PERFORMS GENERAL LOAN SERVICING ACTIVITIES

a. Servicers are required to comply with general loan servicing requirements for VA-guaranteed loans. This will include responding to borrower inquiries, establishing quality control measures, complying with VA regulatory requirements and following the appropriate procedures for:

1. Maintenance of records.
2. Income tax statements.
3. Advances.
4. Prepayments.
5. Late charges and other fees.
6. Payment of taxes.
7. Insurance.
8. Escrow accounts.
9. Application of funds.
10. Legal proceedings.
11. Servicemembers Civil Relief Act (SCRA).

b. Refer to the VALERI User Guides and VA Servicer Handbook M26-4 for more details on these general loan servicing requirements.

3.03 SERVICER GENERAL LOAN ACTIVITIES

a. General loan events reported on current loans provide a snapshot of how each loan is performing and allows VA to forecast future liabilities. For information on general loan events and reporting requirements refer to Chapter 2 of this manual.

1. Release of Liability. Servicers must report the Release of Liability event regardless of the loan status when an obligor has been released from liability. A mortgagor remains liable on the VA-guaranteed mortgage indebtedness unless he or she is released from personal liability. Assumptions of loans for which loan commitments were made on or after March 1, 1988, must have the prior approval of VA or a VA automatic lender. With some exceptions, approval of an assumption of a loan releases the Veteran from any future liability to VA, including liability for any loss resulting from the default of the purchaser or subsequent owner of the property. Failure to secure approval could lead to the acceleration of the loan after the transfer.

(a) Assumptions and releases of liability are generally processed by holders, and include a funding fee and processing charge. The release of liability agreement does not release the Veteran's entitlement, unless the person assuming the loan is a Veteran who has entitlement available to use as a substitute. VA Loan Production (LP) is responsible for examining Releases of Liabilities that servicers have completed and providing guidance. For more information, refer to Chapter 5, Topic 7, of the VA Lenders Handbook.

2. Transfer of Ownership (38 CFR §36.4309, 38 CFR §36.4303(l)). Servicers are required to report the transfer of ownership event, regardless of the loan status, when they learn that an authorized transfer of ownership has been completed. VA requires this event to determine the liable obligor on the loan.

(a) VA requires servicers to report the Transfer of Ownership event in VALERI when the title holder of the property securing a VA-guaranteed loan changes. Servicers are required to process a release of liability on loans originated on or after March 1, 1988, before reporting the transfer of ownership. A release of liability is not required before reporting a transfer of ownership on a loan originated before March 1, 1988. VA requires the transfer of ownership event to determine the liable obligor on the loan. If the loan is or becomes 61 or more days delinquent, VA expects liable obligors to participate in any effort to cure the delinquency.

(b) Technicians should advise any borrower who contacts VA regarding a transfer of ownership that they may remain liable to VA for any loss that may occur as a result of a future default and subsequent claim payment. The borrower should execute a release of liability with the servicer to protect them should the loan go into default. Technicians must document the case notes regarding any action taken.

(c) LP is responsible for providing servicers with guidance for processing assumptions and releases of liability in connection with transfers of ownership.

3. Unauthorized Transfer of Ownership (38 C.F.R. 36.4309). Servicers are required to notify VA via telephone call, email, fax, or letter after learning of an unauthorized transfer of ownership. This information is required to determine whether the unauthorized transfer led to foreclosure and a subsequent claim on the loan. An unauthorized transfer is a transfer of ownership made on a loan originated on or after March 1, 1988, without the prior approval of VA or an automatic lender.

(a) When a servicer reports an unauthorized transfer of ownership, the VA-assigned technician will add an “unauthorized transfer of ownership” alert on the loan in VALERI. Technicians will also add a regulatory infraction for an unauthorized transfer of ownership. If the servicer fails to report the unauthorized transfer by the 7th day of the month following the month in which they discover that the unauthorized transfer occurred, a regulatory infraction for late reporting will also be included. Refer to Chapter 18, Regulatory Infractions, of this manual for guidance on adding a regulatory infraction in VALERI. Technicians should also encourage the servicer to attempt to contact the borrower and execute a retroactive release of liability with them upon hearing of an unauthorized transfer of ownership. The servicer should not accelerate the loan if the loan is performing. Technicians must document the case notes regarding any action taken.

(b) VA Loan Production (LP) is responsible for examining Releases of Liabilities that servicers have completed and providing guidance. For more information, refer to Chapter 5, Topic 7, of the VA Lender’s Handbook.

4. Partial Release of Security (38 C.F.R. 36.4327). Servicers are required to report the Partial Release of Security event regardless of the loan status when they have released the lien on a portion of the security for the loan. A partial release of security releases a portion of a secured property from the lien. For example, partial releases may involve requests from the state or local government to widen a roadway. Occasionally, borrowers request that portions of their properties be released so that they may subdivide or provide gifts of land to their children or to another recipient. In most cases, the borrowers are paid an amount of consideration for the property. Servicers must follow guidelines established by VA to complete partial releases of security. These guidelines include:

(a) No obligated borrower is released from liability.

(b) The servicer must obtain a VA appraisal on the security, the portion to be released, and the value of the remaining security, prior to making a decision regarding a partial release request with the exception of cases such as eminent domain. To order a VA appraisal for a partial release of security, the servicer must contact the Construction and Valuation office of the Regional Loan Center with jurisdiction over the state in which the property is located. Regarding eminent domain cases, if the information provided by, or on behalf of, the borrower is insufficient for making a decision, the borrower must agree to pay for the cost of a VA appraisal.

(c) The consideration received for the release should be equal to the fair market value of the property being released. In state or local Government cases, the amount of the consideration is rarely negotiable, and the property will be taken by eminent domain if the servicer does not grant

the release. In these cases, the only decision to be made is the disposition of the compensation. No VA appraisal is required for state and local Government property acquisitions.

(d) The consideration received for the release must be applied to the principal balance unless the loan to value (LTV) ratio is 80 percent or lower. The LTV ratio is calculated using the current principal balance of the loan and the value of the security remaining after the release. For example, a borrower is offered \$10,000 for a portion of the security on her loan. The consideration is appropriate, and the value of the remaining security will be \$190,000 after the release. The principal balance of the loan is \$160,000, but the balance must be \$152,000 ($\$190,000 \times 0.80$) to meet VA's LTV ratio requirement before the consideration can be released to the borrower. In this case, the servicer must apply \$8,000 of the consideration to reduce the principal balance and the remaining \$2,000 can be released to the borrower. Failure to apply the \$8,000 to reduce the principal balance is a regulatory infraction for claim adjustment.

- (1) The loan must be current if a portion of the consideration is given to the borrower.
- (2) If delinquent, a portion of the proceeds may be used to bring the loan current.
- (3) The portion of the property still subject to the lien must be fit for dwelling purposes.