

TITLE DOCUMENTATION IN FLORIDA

1. Purpose: This circular provides guidance on the submission of title documents to VA's property management contractor when conveying a property to VA in the State of Florida.
2. Background: As part of conveying a property to VA it is necessary to provide proper documentation so that VA's Regional Counsel can conclude that title is in accordance with Title 38, Code of Federal Regulations, section 36.4823(d)(5)(B); i.e., that title vested in VA is such as "would be acceptable to prudent lending institutions, informed buyers, title companies, and attorneys, generally, in the community in which the property is situated." This usually involves providing an owner's title insurance policy with no exclusions, other than for taxes that have not yet been billed, but may be accrued against the property.
3. Florida Statutory Revisions: In June 2008, Florida's Governor signed amendments to State law that became effective on July 1, 2008. Amendments to FL Statutes 718.116(b) (condominiums) and 720.3085(c) (Planned Unit Developments (PUDs)) strengthened remedies for Home Owners' Associations (HOAs) to collect unpaid dues and assessments by making current owners jointly liable with the past owner for the *full amount* of past-due HOA dues and assessments, unless the HOA was named in the foreclosure complaint at the time the action was filed. However, if the HOA is properly named in the foreclosure, a current owner is only required to pay the lesser of either the past due HOA amounts which accrued or came due during a fixed period of time immediately preceding the acquisition of title, or one percent of the original mortgage debt. The fixed period is 6 months for a condominium and 12 months for a property in a PUD. In order to avoid unlimited liability for delinquent HOA dues and assessments, all foreclosures commenced on or after July 1, 2008, should have named existing HOAs in the foreclosure complaints.
4. Title Policy Exclusions: The Florida Regional Counsel has received numerous title insurance policies containing Schedule B exclusions from coverage for "any" assessments related to existing HOAs. The exclusions are appearing even when there is no clear indication that the property is subject to HOA assessment, and they give the appearance that a lien may exist without providing any details. Such a title insurance policy is not acceptable to VA under the standard cited in 38 CFR 36.4823(d)(5)(B) as described above.
5. Title Package Standards: Effective as of the date of this circular, title packages for the State of Florida must include a statement by the foreclosure attorney on his or her letterhead that either there is no active HOA for a particular property, or that existing HOAs have been identified and named in the foreclosure complaint. If a particular property is in an HOA, the title documentation must also include either:

a. A recorded satisfaction of liens releasing all notices of liens filed of record and a letter from the management company of the HOA stating that there are no association fees due against the property; or

b. Schedule B of the owner's title insurance policy must be free and clear of any exclusions for potential HOA liens.

6. Advances for Delinquent HOA Dues and Condominium Fees: This circular constitutes prior approval, as required by 38 CFR 36.4814(e), to advance funds to pay delinquent condominium fees and HOA dues to the extent allowed by Florida law to obtain clear title following foreclosure. Because naming the HOA in the foreclosure action serves to limit the maximum payable after foreclosure to the lesser of one percent of the original mortgage debt, or the amount which came due no more than 6 or 12 months (for a condominium or PUD property, respectively) immediately preceding foreclosure, VA will allow no more than the statutory maximum or the actual amount due, whichever is less. Moreover, fees and charges otherwise allowable that accrue after the date specified in 38 CFR 36.4814(f)(2) may not be included in a claim under the guaranty, nor may the claim exceed VA's maximum guaranty.

7. Special Consideration: In order to afford holders relief in cases where foreclosure actions were not initiated or amended with proper action to protect against excessive HOA dues and assessments, VA will offer a period of special consideration extending for 6 months from the date of this circular. During that period, when Regional Counsel review of a title package finds it lacking in the requirements of paragraph 5, VA's property management contractor will notify the former loan servicer of the deficiency and allow 30 calendar days for return of satisfactory documentation. If the servicer fails to respond timely, or if submitted information is unsatisfactory, VA will typically reconvey the property. During the first 60 days of this period, servicers may also submit for reconsideration complete title packages in accordance with paragraph 5 on cases that were reconveyed for failure to provide requested HOA information within the 6 months prior to this circular.

8. Questions: Questions may be directed to Richard Zimnoch at Richard.Zimnoch@va.gov.

9. RESCISSION: This circular is rescinded April 1, 2013.

By Direction of the Under Secretary for Benefits

Mark Bologna, Director
Loan Guaranty Service

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