

RECAP OF CLASS ACTION AGAINST VETERANS ADMINISTRATION INVOLVING DEFICIENCY CLAIMS FOLLOWING VA FORECLOSURES

Introduction and Purpose of Class Action:

Doug has been contacted by many veterans who received a demand letter from the VA requesting payment on a deficiency claim following a VA foreclosure. This interest was due to his role as an attorney for military veterans in a class action against the VA. The purpose of the class action was to try to set aside deficiency claims made by the VA following non-judicial foreclosure of VA mortgages on Minnesota real estate. This portion will provide a brief history of the case.

Initial Ruling:

The plaintiff class was initially successful against the VA, when Judge Edward Devitt certified the group as a class containing approximately 2,000 veterans. Judge Devitt also granted summary judgment in favor of the veterans, noting that the VA had no right to collect deficiency claims from veterans following nonjudicial foreclosure. Because almost all Minnesota VA foreclosures were nonjudicial (also known as foreclosure by advertisement), virtually all of the veterans were "off the hook" under Judge Devitt's ruling. The VA appealed.

First Appeal:

The ruling of Judge Devitt was affirmed. The Eighth Circuit Court of Appeals however did significantly modify the ruling of Devitt, essentially allowing the VA to pursue collection unless the due process rights of the veterans had been violated. The Court of Appeals held that use by the VA of non-judicial foreclosure was allowed, and the VA could collect on a delinquency claim as long as the VA sent notice of the foreclosure sale to the veteran.

Second Appeal:

In the early 1990's the case went back to a different Federal judge (Judge James Rosenbaum) following the death of Judge Devitt. On January 14, 1994, Judge Rosenbaum issued an order to implement the prior rulings, and that order in turn went up on appeal to the Eighth Circuit. Judge Rosenbaum's order was affirmed. The U.S. Supreme Court denied any further review. The appellate courts would not reverse the decision of Judge Rosenbaum, which included a provision that veterans were not entitled to written notice of the actual time and place of the foreclosure sale.

Current Status:

We do not expect any further substantial activity within the class action lawsuit. Instead, it appears certain that action by the veteran to obtain relief from the deficiency

claim will be made only on a case by case basis. As it stands, only a small percentage of the veterans will be relieved of the deficiency claims. In essence, any veteran that received written notice from the VA of the intent to foreclose remains liable, even though the veteran was not specifically advised of the time and place of the sheriff's sale. If the VA sent the standard form letters to the veteran as part of the foreclosure process, then the veteran remains responsible. In the rare case where no notice at all was sent, the veteran may be relieved of liability on due process grounds. Fortunately, it appears that the VA is not actively pursuing deficiency collections at this time, and certainly not on the scale of collections that took place at the time the class action was started.

Waiver Requests and Other Relief:

Some veterans have successfully obtained waivers or partial waivers of the indebtedness. If you are interested, you should contact my office directly. There are several reasons why the veteran could still escape liability. First, many veterans sought waivers in the late 1980's. Fortunately, the waiver rules changed as of mid-December 1989, and in many cases the veteran can once again apply for a waiver even though one was denied under the old rules. Second, it is possible to obtain a waiver on the basis of undue financial hardship, or alternately because the VA may have been at fault in delaying the foreclosure process. Third, many of the claims are quite old, and I am pursuing theories similar to the Statute of Limitations to bar further collection. In general, our efforts to prevent collection of these deficiency claims continues.

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