

DATE: 12-04-90

CITATION: VAOPGCPREC 98-90
Vet. Aff. Op. Gen. Couns. Prec. 98-90

TEXT:

Subj: Eligibility for Waiver of Indebtedness--

QUESTION PRESENTED:

May a veteran's spouse who purchased a VA owned property with a VA vendee loan where the veteran was neither a title holder of the property nor an obligor under the obligation to VA secure a waiver of a debt relative to that loan under the provisions of 38 U.S.C. § 3102(b)?

COMMENTS:

1. The obligor seeking the waiver in this instance is the former spouse of a veteran who while married to the veteran purchased residential property from VA and financed such purchase with a VA vendee loan. The veteran was not a party to the transaction, was not an obligor under the loan, and had no title interest in the property. Shortly after closing, the property was transferred to a purchaser who subsequently defaulted on the loan payments. During the foreclosure process * * * the veteran's spouse, received notice of the foreclosure action and alleges that in discussions with personnel at the regional office she was advised to wait until the foreclosure was completed and then to seek a waiver of the debt. * * * is currently requesting such a waiver. * * * was divorced from her husband, the veteran, before the debt was established.

2. After the debt was established, * * * sought a waiver of the indebtedness. The local committee on waivers and compromises denied consideration of the request and based such denial on the interpretation that absent liability by the veteran a spouse is not eligible for a debt waiver pursuant to the existing statute.

3. Section 3102(b), title 38, United States Coded, provides, in part that as to any loan guaranteed, insured, or made under chapter 37, the Secretary shall waive payment of an indebtedness to VA by "the veteran's spouse, following default and loss of the property, where the Secretary determines that collection of such indebtedness would be against equity and good conscience." VA regulations permit the granting of debt waivers to former spouses. 38 C.F.R. § 1.957(a)(1)(i). Both the statute and regulations, however, are silent on the issue of whether a debt waiver may be granted to a spouse absent liability on the original indebtedness by the veteran. The statute appears to hint that a spouse's right to a waiver is derived from the veteran's ability to secure such a waiver and that in order for the veteran to qualify the veteran must be liable on the indebtedness. Support for this interpretation is found in the legislative history of the Act which added subsection (b) to section 3102, Public Law 92-328, the "Veterans'

ompenation and Relief Act of 1972." The sectional analysis of the bill ultimately enacted provides, in part, that " t he proposed new subsection (b) to be added to section 3102 of title 38 would clarify the Administrator's authority to waive an indebtedness of a veteran or his wife which resulted from a default and loss of the property securing a loan guaranteed, insured, or made to the veteran, and thus, would consolidate the Administrator's waiver authority...." House Report No. 92- 1125, June 13, 1972, U.S. Code Congressional and Administrative News 1972, at page 2712.

4. Generally, " w hen the intention of the legislature is so apparent from the face of the statute that there can be no question as to its meaning, there is no room for construction." Sutherland Stat Const § 46.01 (4th Ed). Even the most basic general principles of statutory construction as that recited herein must yield to clear contrary evidence of legislative intent. However, "the plainer the language, the more convincing contrary legislative history must be...." Sutherland Stat Const s 48.01 (4th Ed). Events occurring immediately prior to the time when an act becomes law are indicative of what meaning the legislature intended and are generally given great weight. Sutherland Stat Const § 48.04 (4th Ed).

5. In the instant matter, the statute clearly permits the waiver of recovery of a debt, resulting from home loan matters, from a veteran's spouse. The statute, however, is silent as to whether this waiver benefit is bestowed directly upon the spouse or if it is derived from the veteran's eligibility to the waiver. The regulations are similarly unclear; they do expand the waiver entitlement to a former spouse. The legislative history relative to section 3102(b), however, clearly reflects that the spouse's eligibility for a waiver is derived from the veteran's. Granting the spouse a waiver, according to the legislative history, is applicable to situations relating to "an indebtedness of a veteran or his wife which resulted from a default and loss of the property securing a loan guaranteed, insured, or made to the veteran...." (Emphasis ours.) House Report No. 92-1125, June 13, 1972, U.S.Code Congressional and Administrative News 1972, at page 2712. It is, therefore, clear that, in order for the spouse to be eligible for a waiver of a debt pursuant to 38 U.S.C. § 3102(b), the veteran must have been a party to the original obligation. In the instant situation, the veteran, * * * was never a party to the transaction, * * * was the sole obligor, the sole title holder and within 60 days of purchase of the property transferred title to a purchaser. * * *, therefore, would not be eligible for waiver of the debt under section 3102(b). Section 1820(a)(4), title 38, United States Code, permits the Secretary, as to matters arising under chapter 37, to waive any demand however acquired. Accordingly, waiver of recovery of an indebtedness of this nature may be considered pursuant to the Secretary's discretionary authority under section 1820.

HELD:

A spouse's eligibility to secure a waiver of a loan indebtedness pursuant to 38 U.S.C. 3102(b) is derived through the veteran's eligibility. To be eligible for such a waiver, the veteran must be liable on the indebtedness. Absent such eligibility by the veteran, the spouse would not be eligible independently to secure a waiver of the debt pursuant to

section 3102(b). The Secretary's discretionary authority to grant waivers of debts arising under the home loan program, 38 U.S.C. 1820(a)(4), however, may be exercised in situations of this nature.

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