

**§ 36.4367**

(3) *Declarant payment of offsite facility in a series project.* Until the declarant has completed all of the intended condominium phases in a total condominium development or established each condominium regime by filing a separate declaration in a series development, the balance of the total sum of the expenses of the offsite facility not covered by the assessment against the unit owners should be assessed against and be payable by the declarant commencing on the first day of the first month after the first unit is conveyed to a homeowner in the first phase. If this balance is not paid, it must become a lien against those parcels of land in the development area which are owned by the declarant. The collection of such debt and enforcement of such lien may be by foreclosure or such other remedies afforded the corporation or association under local law.

(f) *Professional management.* Many condominiums are small enough and their common areas so minimal that professional management is not necessary. VA does not have a requirement for professional management of condominiums. The powers given to the owners' association by the declaration and bylaws are fundamentally for "use control" and maintenance of the undivided interest all of the owners have in the common areas. These powers normally include management which may, if desired, be delegated to a professional manager. However, if the board of directors wants professional management, the management agreement must be terminable for cause upon 30 days' notice, and run for a reasonable period of from 1 to 3 years and be renewable for consent of the association and the management. (Management contracts negotiated by the declarant should not exceed 2 years.)

(g) *Commercial areas.* With respect to existing and proposed condominiums, commercial areas within condominium developments are acceptable, but such interests will be considered in value.

(Authority: 38 U.S.C. 3703(c)(2), 3710(a)(6))

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0448)

**38 CFR Ch. I (7-1-10 Edition)**

**§ 36.4367 Requirement of construction warranty.**

Each certificate of reasonable value issued by the Secretary relating to a proposed or newly constructed dwelling unit, except those covering one-family residential units in condominium housing developments or projects within the purview of §§ 36.4860 through 36.4865, shall be subject to the express condition that the builder, seller, or the real party in interest in the transaction shall deliver to the veteran constructing or purchasing such dwelling with the aid of a guaranteed or insured loan a warranty, in the form prescribed by the Secretary, that the property has been completed in substantial conformity with the plans and specifications upon which the Secretary based the valuation of the property, including any modifications thereof, or changes or variations therein, approved in writing by the Secretary, and no certificate of guaranty or insurance credit shall be issued unless a copy of such warranty duly received by the purchaser is submitted with the loan papers.

(Authority: 38 U.S.C. 3703(c)(1), 3705)

**§ 36.4368 Nondiscrimination and equal opportunity in housing certification requirements.**

(a) Any request for a master certificate of reasonable value on proposed or existing construction, and any request for appraisal of individual existing housing not previously occupied, which is received on or after November 21, 1962, will not be assigned for appraisal prior to receipt of a certification from the builder, sponsor or other seller, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin.

(b) On requests for appraisal of individual proposed construction received on or after November 21, 1962, the prescribed nondiscrimination certification will be required if the builder is to sell the veteran the lot on which the dwelling is to be constructed, but will not be required if:

- (1) The veteran owns the lot; or

(2) The lot is being acquired by the veteran from a seller other than the builder and there is no identity of interest between the builder and the seller of the lot.

(c) Each builder, sponsor or other seller requesting approval of site and subdivision planning shall be required to furnish a certification, in the form prescribed by the Secretary, that neither it nor anyone authorized to act for it will decline to sell any property included in such request to a prospective purchaser because of his or her race, color, religion, sex or national origin. Site and subdivision analysis will not be commenced by the Department of Veterans Affairs prior to receipt of such certification.

(d) No commitment shall be issued and no loan shall be guaranteed or insured under 38 U.S.C. chapter 37 unless the veteran certifies, in such form as the Secretary shall prescribe, that

(1) Neither he/she, nor anyone authorized to act for him/her, will refuse to sell or rent, after the making of a bona fide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, or national origin;

(2) He/she recognizes that any restrictive covenant on the property relating to race, color, religion, sex or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) He/she understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

(Authority: 38 U.S.C. 3703(c)(1))

**§ 36.4369 Correction of structural defects.**

(a) The purpose of this section is to specify the types of assistance that the Secretary may render pursuant to 38 U.S.C. 3727 to an eligible borrower who has been unable to secure satisfactory correction of structural defects in a dwelling encumbered by a mortgage securing a guaranteed, insured or direct loan, and the terms and conditions

under which such assistance will be rendered.

(b) A written application for assistance in the correction of structural defects shall be filed by a borrower under a guaranteed, insured or direct loan with the Director of the Department of Veterans Affairs office having loan jurisdiction over the area in which the dwelling is located. The application must be filed not later than 4 years after the date on which the first direct, guaranteed or insured mortgage loan on the dwelling was made, guaranteed or insured by the Secretary. A borrower under a direct, guaranteed or insured mortgage loan on the same dwelling which was made, guaranteed or insured subsequent to the first such loan shall be entitled to file an application if it is filed not later than 4 years after the date on which such first loan was made, guaranteed or insured by the Secretary.

(c) An applicant for assistance under this section must establish that:

(1) The applicant is the owner of a one- to four-family dwelling which was inspected during construction by the Department of Veterans Affairs or the Federal Housing Administration.

(2) The applicant is an original veteran-borrower on an outstanding guaranteed, insured or direct loan secured by a mortgage on such dwelling which was made, guaranteed or insured on or after May 8, 1968. The Secretary may, however, recognize an applicant who is not the original veteran-borrower but who contracted to assume such borrower's personal obligation thereunder, if the Secretary determines that such recognition would be in the best interests of the Government in the particular case.

(3) There exists in such dwelling a structural defect, not the result of fire, earthquake, flood, windstorm, or waste, which seriously affects the livability of the dwelling.

(4) The applicant has made reasonable efforts to obtain correction of such structural defect by the builder, seller, or other person or firm responsible for the construction of the dwelling.

(d) In those instances in which the Secretary determines that assistance under this section is appropriate and