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tions in toto, and does not recommend its proposals as a uniform adoption law. Rather the recommendations are offered as a basis of study of present state statutes to see if they adequately meet requirements for the protection of the child, his natural parents, and the adopting parents.

In the main, the adoptive procedures recommended are designed to do away with the evils brought about by a lack of supervision of adoptions by the state and its courts, particularly as to those children born out of wedlock. This would be achieved by legislation requiring court sanction of voluntary relinquishment or surrender of parental rights, social investigations of the background of the child and the prospective adoption home, and for a period of residence of the child in the home under the supervision of an agency qualified to place children.

Step by step, the pamphlet outlines the contents of a model law designed to protect the interests of the child, his natural parents, and the adoptive parents. Each of the proposals is the subject of a brief discussion. The proposals must be keyed to the needs of the individual states, the agency warns.

> Each state must consider its own special needs and situations and determine whether its court system and the structure and state of development of its welfare program make it advisable for that state to follow closely the suggestions given or whether certain deviations may be necessary.

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VA POLICY IN PAYING ATTORNEYS FEES ON FORECLOSURE OF GI LOANS

The Minimum Fee Committee of the Denver Bar Association, under the chairmanship of Merrill A. Knight, recently had a conference with officials of the Regional Loan Guaranty Office of the Veterans Administration concerning the matter of fees paid for foreclosure on G. I. loans. The substance of the Veterans Administration's position on this matter, which would become of increasing importance to lawyers should economic conditions take a turn for the worse, was summarized so well by Loan Guaranty Attorney Harold F. Mudge in a letter to Mr. Knight, that *Dicta* is printing Mr. Mudge's letter in its entirety for the benefit of interested parties:

"Reference is made to the conference held with your Committee in the office of the Loan Guaranty Officer at the Veterans

Administration Center on Tuesday afternoon, May 23, 1950, at which you requested from the writer a letter setting out briefly some of the matters discussed. Primarily, the objective of the conference was a clearer understanding of the theory behind the establishment of a maximum amount that may be charged to the *Administrator* on account of attorney fees paid by the lender in connection with foreclosures of loans guaranteed or insured by the Veterans Administration. This letter is in response thereto.

"After World War II, the Congress enacted a great deal of statutory law beneficial to veterans. Some of this legislation was primarily protective of the veteran's civil rights to help in his adjustment to civilian life after his return from service, such as the Soldiers and Sailors Civil Relief Act of 1940 and its amending Act of 1942. Other legislation made available certain direct benefits, such as disability and pension benefits for veterans, their widows and dependents. An example of such legislation is Public Law 702, 80th Congress, which provides direct grants of money to paraplegic veterans so that they might purchase or construct their own home with special features to accommodate their disability. The third group, and by far the greatest in practical and administrative extent, are the laws passed to *assist* the veteran to obtain an education and practical training to advance his economic status and raise the standard of living for himself and his family and to obtain a home, farm or business of his own.

THE STATUTORY BACKGROUND

"The housing of veterans and their establishment in business or on farms of their own are the objectives of Title III of the Servicemen's Readjustment Act of 1944 and the amendments thereto. This Act, together with the regulations made from time to time applicable thereto, constitute the Loan Guaranty program. Congress placed the duty of administering it upon the Administrator of Veterans Affairs. The Act makes it possible for any eligible veteran of World War II *to borrow money* over long terms on easy, amortized payments and minimum cost from conventional lending institutions for the purposes expressed in the Act. In order to make such loans attractive to lending agencies generally the United States through the agency of the Veterans Administration acts as guarantor or insurer of the loan to the veteran. By the provisions of the Act, real estate loans may be guaranteed for not more than 50% of the loan and not to exceed $4,000.00 on real estate loans or $2,000.000 on non-real estate loans. As to home loans only, the guaranty entitlement has recently been increased to a maximum of $7,500.00 or 60% by Public Law 475, 81st Congress, effective April 20, 1950.

"The amount guaranteed by the United States, as a practical matter, amounts to a down payment in similar amount made to

the veteran's credit on the loan. The Government also allows, as a gratuity to each veteran making a guaranteed loan, an amount equivalent to 4% of the amount guaranteed. (Sec. 500 (c) of the Act.) This sum is paid promptly to the lender upon the lender's report of the loan closing to be applied as a credit to the veteran's obligation to the lender. These protective features provided by the Act make such loans extremely desirable to the great secondary loan market, such as the large insurance companies, and the lender has no difficulty in disposing of "blocks" of these loans as soon as they are made. However, in order to assure such a market for these loans, the Government buys a number of them through the Federal National Mortgage Association.

"In the event of a default on the loan the holder may file claim with the Veterans Administration and, upon approval, be paid at once up to the guaranteed amount of the loan. He is not required to liquidate the security first but may do that afterward, then make his accounting to the Administrator of the proceeds of the foreclosure sale and remit to the Administrator any excess over the amount necessary to make him whole. He is also paid the costs of closing the loan (Reg. 36:4312), his court costs, money advanced by him for taxes, hazard insurance premiums, trustee's or receiver's fees, other expenses reasonably necessary for collecting the debt or repossessing the security and for 'a reasonable amount for legal services actually performed not to exceed 10 per cent of the unpaid indebtedness as of the date of the first uncured default, or $250.00, whichever is less' (Reg. 36:4313).

CONDUCTING THE FORECLOSURE

"The holder through his attorney conducts the foreclosure sale involving real property and upon the date for the sale having been established the Administrator may specify a 'minimum amount to be credited to the indebtedness,' commonly referred to as the 'upset price' (Reg. 36:4320 (a)). This upset price is usually less than the normal re-sale value of the premises and generally less than the balance of indebtedness due on the note. The holder may then bid any amount *not in excess* of this figure at the public sale and, if he is the successful bidder, he has his election during the 15 day period after the sale to either keep the property or transfer the same to the Administrator in which event he will be paid the specified amount of the upset price as consideration therefor. The upset price is usually made low enough to tempt the holder to keep the property and resell at a profit. The Administrator will accept transfer of the property subject to the redemption period so that the holder does not have to wait for the official deed before conveying to the Administrator.

"It may be readily seen that these features are sufficient to protect the holder against loss in practically any case involving default of a guaranteed real estate loan.

"However, the loans are guaranteed or insured on a business basis and the veteran obligor is accountable to the Government for any loss suffered through payment of claim on the loan. This on the equitable principle of indemnity inherent by law in a guarantor. It is embodied further in the regulations which, after publication in the Federal Register, have the effect of law. Reg. 36:4323 (e) provides:

> "Any amounts paid by the Administrator on account of the liabilities of any veteran guaranteed or insured under the provisions of the act shall constitute a debt owing to the United States by such veteran.

"Therefore, the amount of any payment so made by the Government is charged to the veteran and collection procedure by the proper agencies is instituted. Any benefits otherwise being paid to such veteran by the Veterans Administration may be equitably applied to his indebtedness. The veteran may apply for a waiver of the collection of the debt upon the grounds of 'undue hardship' and that the default occurred through no fault of his own. Evidence is submitted and in meritorious cases the waiver will be granted.

"Reg. 36:4323 (a) provides in substance that after payment of the holder's claim and upon his receiving 'the full amount payable under his contract with the debtor,' that the Administrator shall be subrogated 'to the contract and the lien or other rights of the holder' as against the veteran and subsection (b) of the above regulation requires the holder to 'execute, acknowledge and deliver' an instrument to that effect.

"All this indicates that amounts paid out by the Government on behalf of defaulting veterans is not a gift to him but constitutes a legal debt of the veteran which he owes to the United States.

VETERANS PROTECTED AGAINST UNFAIR CONTRACTS

"The legislation would not accomplish its purpose unless the veterans were protected against onerous and unfair terms in their loan contracts which would tend to throw them into default. Also, this would result in a greater loss to the United States as guarantor. When a veterans makes a loan to finance a home, farm or business the Government wants to see that he retains it and does not become a liability both to himself and the Government.

"Therefore, a number of *protective* features were found necessary to implement the terms of the Act. Sec. 501 (2) of the Act concerns home loans and states that terms of payment must 'bear a proper relation to the veteran's present and anticipated income and expenses' and that the purchase price shall not exceed the reasonable value as determined by the V. A. appraisal (Sec. 501 (3)). All loans having a maturity date of over 5 years from date must be amortized in 'approximately equal periodic payments' (Reg. 36:4309 (a)). By Reg. 36:4311 the interest rate (except

for non-real estate insured loans) was limited to 4% and brokerage charges or commissions charged to the veteran borrower were prohibited by Reg. 36:4312. Trustee's fees were limited to 5% of the unpaid indebtedness by Reg. 36:4313 (iv) and the attorney's fees allowable *to the lender* in his *accounting to the Administrator* is limited to 10% of the unpaid indebtedness or $250.00 whichever is less (Reg. 36:4313 (v)).

"Further, a service charge is precluded by Reg. 36:4312 (a) and these prohibitory provisions are implemented by Regs. 36:4316 and 36:4317 which prohibit the institution of proceedings until the expiration of certain time limits specified therein. Finally, Reg. 36:4334 in effect incorporates all the provisions of the regulations (current at the time the loan was made) into every loan contract approved for guaranty or insurance with the effect of amending and supplementing the terms of any such contract inconsistent therewith.

SUMMARY OF VA'S POSITION

"In summarizing, it was considered that in return for the protection furnished by the Government's guaranty, the lender might well be expected to forego some of the penalties and special charges which it normally charged on conventional loans. *As to the attorney's fee allowance, it is merely a figure used by the lender in his accounting to the Administrator and in no way indicates the amount actually paid by the lender to his attorney, except that the lender must have actually paid that amount or more, for his services.* The Veterans Administration does not employ the attorney and is not concerned with the amount of his charge to the lender. We are concerned, however, that the amount charged to be paid by the Veterans Administration and thereupon to become part of the veteran's indebtedness to the United States be reasonable and within the limitations of Reg. 36:4313 (b) (v). In case of default and foreclosure the attorney's fee is determined separately in each individual case within the limits set by the regulation. The work performed by the attorney is indicated to great extent by the copies of procedural papers which he submits under the provisions of Sec. 36:4319 of the regulations. Other factors considered are whether the foreclosure is judicial, resulting in an assignable judgment, or conducted by power of sale through the Public Trustee, whether the attorney must travel some distance to the county seat, the appointment of a receiver, appearance, and resistance of the action by the defendant or controversies involving adverse lien claimants, the location of the office of the attorney, geographical location of the property, fees charged generally in the community in which the attorney has his practice, and many other features of the specific case to ultimately determine 'What is reasonable?' The amount of the attorney's fees in these matters is set by the Loan Guaranty Officer with the advice of the Chief Attorney.

"We wish to thank both the Denver and Colorado Bar Associations and in particular the members of their Committees for taking the time and interest for a correct understanding of this situation and requesting a conference for that purpose. It is felt that great good will result from a proper presentation of this matter of attorney fees in connection with foreclosures of loans guaranteed or insured by the Veterans Administration and it is hoped that your Committee will now be able to correct any erroneous impressions in this regard which may be held by members of the Bar.

"Finally, the attorney fees discussed herein should not be confused with attorney fees paid to attorney title examiners *employed* by the Veterans Administration for the purpose of examination of the title and proper conveyance to the Administrator. In such case it is our practice to employ local counsel who are paid the conventional fee for their work in that respect, of course assuming it to be reasonable. To this date we have never had any contention over the amount of attorney fees paid in such cases."

FOUR NEW REAL ESTATE STANDARDS

Four new real estate title standards were promulgated by the Denver Bar Association through its Real Estate Standards committee on June 7, 1950. Edwin J. Wittelshofer, committee chairman, stated that these new standards were also being forwarded for the consideration of the members of the Colorado Bar Association committee. Together with Standard No. 63 (Title Acquired Through Foreclosure As Affected by the 1942 Amendment to the Soldiers' and Sailors' Civil Relief Act), promulgated on November 30, 1949, the new standards Nos. 64-67 will be offered for adoption on a state-wide basis at the 52nd annual convention of the Colorado Bar Association at Colorado Springs, October 12-14, 1950.

The text of the new standards follows:

Standard No. 64—Sidewalk Certificates.

Problem: An unreleased sidewalk certificate has remained of record for more than 15 years subsequent to the due date thereof. Should an attorney render an opinion showing the title free and clear of such sidewalk certificate?

Answer: Yes.

Note: The above problem does not refer to tax sale certificates based on special assessments for sidewalk improvement taxes, but refers only to those certificates issued under Sec. 54 of the Denver Charter.

Standard No. 65—Corporate Seal—Omission of.

Problem: If a corporate conveyance has been of record for at least twenty years in the office of the recorder of the county