

Re: Regarding: Locke, Michael - Bankruptcy Chapter 13

Michael Locke

Tue 6/6/2023 1:42 PM

To: Jeffrey Badgley <jbadgley@badgleylawgroup.com>; Jon Masters <jmasters@badgleylawgroup.com>

Cc: Stefanie Phelps <assistant@badgleylawgroup.com>; SECVARRequest <SECVARRequest@va.gov>

 1 attachments (119 KB)

Summary and Fact List Objection to Mortgage Proof of Claim _1.pdf;

As I understand it, there presently are no traditional loss mitigation option to allow me to stay in my home. The VA has a procedure in place when such situations arise. Unfortunately, as circumstances presently stand, the VA representatives I've been able to engage with maintain that they bankruptcy filing prevents the VA from further correspondence regarding my home loan. It's debatable whether this is true or not, but in the interest of removing any doubt, I would greatly appreciate having something in writing to present to the VA stating the bankruptcy does not prevent the VA from corresponding with me regarding my home loan.

1. "VA also has a refund option that is available for eligible borrowers as an alternative to foreclosure. Please refer to Chapter 9, Refunds, of this handbook for additional information regarding the refunding process." VA Agency Manual 26-4, Chapter 5.01(b), Loss Mitigation options

https://www.benefits.va.gov/WARMS/docs/admin26/m26_04/Ch5_Loss_Mitigation.docx

2. "Refunding is when the Department of Veterans Affairs (VA) elects to purchase a loan from the servicer and assume primary servicing responsibilities. This is VA's final attempt to keep the borrower in their home. Refunds can be considered if VA determines it is in the best interest of the borrower and the government. The servicer or the VA-assigned technician may initiate the refund consideration process at any time during the life of the loan." VA Agency Manual 26-4, Chapter 9.01(a)

https://www.benefits.va.gov/WARMS/docs/admin26/m26_04/M26-4%20Chapter%209%20Refunds%20-%202017.docx

3. The section of VA agency manual 26-4 concerning delinquent loan servicing contemplates debtors that file for bankruptcy, but at no point is it stated that when a debtor does so is the VA prevented from engaging with said debtor. VA Agency Manual 26-4, Chapter 4.16

https://www.benefits.va.gov/WARMS/docs/admin26/m26_04/Ch4.docx

Michael Locke

From: Michael Locke <mbl22885@msn.com>

Sent: Monday, June 5, 2023 11:10 PM

To: Jeffrey Badgley <jbadgley@badgleylawgroup.com>; Jon Masters <jmasters@badgleylawgroup.com>

Cc: Stefanie Phelps <assistant@badgleylawgroup.com>; SECVARRequest <SECVARRequest@va.gov>

Subject: Re: Regarding: Locke, Michael - Bankruptcy Chapter 13

Hey,

Seeing this message again, I want to object to PHL's claim.

I'd also greatly appreciate it if something could be obtained from the bankruptcy court stating the VA is free to "correspond" with me regarding the home loan.

The additional cc is for the Client Relations Office of the VA Secretary. I know it to be monitored. I imagine it will be a way of effectively navigating the VA provided something from the court is obtained.

Michael Locke

From: Jeffrey Badgley <jbadgley@badgleylawgroup.com>

Sent: Tuesday, May 30, 2023 2:09 PM

To: Michael Locke <mbl22885@msn.com>; Jon Masters <jmasters@badgleylawgroup.com>

Cc: Stefanie Phelps <assistant@badgleylawgroup.com>; Jeffrey Badgley <jbadgley@badgleylawgroup.com>

Subject: RE: Regarding: Locke, Michael - Bankruptcy Chapter 13

Michael, I'm not trying to sell you anything. I have already explained to you that you can object to a claim and also try to mediate for a modification. You can't keep the house if the VA is a contingent creditor.

I spoke to the lender and the mediator and they have agreed to reschedule your mediation conference for Monday, Jun 5th, at 2 p.m. The call in number is

Mediation call in line and passcode

-Teleconference number: [\(978\)699-0528](tel:9786990528)

-Participant Code: 2888

This mediation conference will provide you with an opportunity to ask questions about the VA program guidelines and whether the lender has complied with them.

I have a VA home loan through Planet Home Lending that was in arrears due to a mandatory evacuation in September 2019 from Hurricane Dorian, as well as the COVID-19 pandemic. The VA has a disaster loan mitigation option that could have been applied, but Planet Home Lending did not offer it. The CARES Act was signed in March 2020 and offered protection to homeowners with mortgages backed by the federal government who are facing financial difficulties due to the COVID-19 pandemic, and explicitly states that mortgage assistance must be provided regardless of delinquency status. The VA then issued a circular on April 8, 2020 that stated servicers have to give borrowers the opportunity to pursue all loss mitigation options to bring their loan current. The VA also issued a circular in July 2021 that introduced the COVID-19 Refund Modification which allows for significant payment reductions and does not require a financial evaluation. Despite this, Planet Home Lending began court proceedings to obtain a foreclosure, and only offered a loan modification with a trial payment period in December 2021, which could have been done at any point during the default period. I rejected the modification offer due to the applicable laws and regulations that favor the veteran, such as 38 U.S.C. § 5103A and *Brown v. Gardner*.

1. I currently have a VA home loan through Planet Home Lending.
2. In September of 2019 the area the property is located was under a mandatory evacuation due to Hurricane Dorian. The area was declared a federal disaster area in December of 2019.
3. In 10/1/2019 I missed the first home loan payment.
4. In December of 2019 I submitted an incomplete loss mitigation package to Planet Home Lending.
5. On 1/3/2020 I was denied consideration for any loss mitigation options by Planet Home Lending.
6. The VA has a disaster loss mitigation option that allows for a loan modification absent a complete loss mitigation package.
7. The VA disaster loan modification specifies a trial payment plan is used to verify income in lieu of a complete loss mitigation package.
8. Planet Home Lending had the ability to offer a VA Disaster Loan Modification and/or a special forbearance at this point, but does not.
9. In early 2020 the Covid-19 pandemic begins.
10. On 3/27/2020, THE CARES ACT is signed into law.
11. The CARES Act offers protection to homeowners with mortgages backed by the federal government who are facing financial difficulties due to the COVID-19 pandemic, and explicitly states in section 4022(b)(1) that mortgage assistance provided pursuant to the CARES ACT was to be provided "...regardless of delinquency status."
12. The Department of Veterans Affairs makes use of circulars issued via the official VA website to provide current policies and procedures to VA-approved lenders and servicers.
13. The VA explicitly states via their official website that circulars are supplemental to VA home loan regulations.

14 On 4/8/2020, the VA issues "Circular 26-20-12" via the official VA website in response to the CARES ACT.

15. Section 1 of VA Circular 26-20-12 explicitly states "The servicer must ensure the borrower has been given every opportunity to pursue all possible loss mitigation options in order to bring their loan current. Failure to do so could impact a future claim payment and could lead to other legal or administrative action(s) against the servicer."

16. I was eligible for a disaster loan modification for the entirety of my default period, but at no point was I offered a disaster loan modification.

17. As a result of section 1 of VA Circular 26-20-12, Planet Home Lending was required to offer a disaster loan modification.

If Planet Home Lending continues to maintain that I was ineligible for any loss mitigation options, then the following applies.

18. Section 3 of VA Circular 26-20-12 states "The borrower, not the servicer, is entitled to determine the period of the forbearance..."

19. Planet Home Lending stated the following regarding forbearance applied to my home loan:

"In May 2020, the Loan was flagged as COVID-19 impacted and upon request, was approved for a COVID-19 forbearance plan. The forbearance plan was extended multiple times August 2020 through August 31, 2021. Planet sent the enclosed correspondence to determine if you were still in need of a forbearance and did not receive a response. Therefore, the forbearance expired on August 31, 2021.

On October 5, 2021, upon receipt of an online request from you, you were approved for an extension of the COVID-19 forbearance plan, which was good through November 1, 2021. As an additional courtesy, Planet backdated the forbearance plan to September 1, 2021, waived your late fees and ensured no negative credit reporting was furnished to the three major agencies pursuant to the CARES Act while you were on a forbearance."

20. Subsection c of section 5 of VA Circular 26-20-12 states "Servicers should review loan files for all possible loss mitigation options no later than 30 days before the forbearance period is scheduled to end. Servicers should document such reviews in their loan servicing systems. If no loss mitigation options are possible, in cases where the home has equity, servicers must refer the file to the relevant Regional Loan Center for VA's consideration of a loan refunding."

21. No such review was conducted or documented within the VA Loan Electronic Reporting Interface (VALERI).

22. The VA via 38 CFR § 36.4301 defines "home equity" as "...the difference between the home's reasonable value and the outstanding balance of all liens on the property."

23. The VA via 38 CFR § 36.4301 defines "reasonable value" as "...that figure which represents the amount a reputable and qualified appraiser, unaffected by personal interest, bias, or prejudice, would recommend to a prospective purchaser as a proper price or cost in the light of prevailing conditions."

24. Per the applicable appraisal on file with the VA and Planet Home Lending, the “reasonable value” of the home was/is \$292,000.

25. At the time of default, the principal balance of the home was \$263,329.99.

26. If the first forbearance period expired in August of 2020 and no loss mitigation options were possible, in July of 2020 Planet Home Lending was required to refer the home loan to the applicable VA Regional Loan Center for possible refunding, as there was no way the outstanding balance of the home exceeded the “reasonable value” of \$292,000.

27. At no time did Planet Home lending refer the home loan to the applicable VA Regional Loan Center for possible refunding.

28. On 7/1/2021, VA Circular 26-20-12 is rescinded.

29. On 7/23/2021 the VA issues Circular 26-21-13.

30 The purpose of VA Circular 26-21-13 is to provide “...VA’s waterfall of home retention options for helping borrowers affected financially by the COVID-19 pandemic.”

31. VA Circular 26-21-13 also “...announces the COVID-19 Refund Modification, a type of loan modification specific to those borrowers needing payment reductions when exiting COVID-19 forbearance.”

32. While section 5 of VA Circular 26-21-13 identifies eligibility criteria for borrowers to whom the home retention waterfall will apply, no such eligibility criteria is provided for the COVID-19 Refund Modification. It should be noted that Planet Home Lending presently reflects the last payment received on the loan as 1/1/2020.

33. The COVID-19 Refund Modification is a type of loan modification that allows for significant reductions in a borrower's monthly payments. The indebtedness is secured as a junior lien in favor of VA that does not accrue interest or require monthly payments, and only becomes due when the property is sold, the loan is paid off, or the loan is refinanced. VA can purchase indebtedness up to 30 percent of a borrower's unpaid principal balance, and does not require a financial evaluation for every case.

34. On 9/30/21 Planet Home Lending begins court proceedings to obtain a foreclosure.

35. On 11/4/2021 I submits a complete loss mitigation package to Planet Home Lending.

36. On 12/27/2021 Planet Home Lending puts forth an offer for “Standard Modification” (ie Traditional Loan modification) with a trial payment period.

37. Besides in name, the offer is a disaster loan modification.

38. Due to the proceeding facts, I rejected the loan modification as it could have been offered at any time within the default period.

39. The U.S. Congress has put in place a number of laws and practices to favor veterans as it relates to receiving benefits from the VA. This includes 38 U.S.C. § 5103A, which requires the VA to help the claimant develop their claim for benefits. Furthermore, under *Brown v. Gardner*, 513 U.S. 115, 115 S. Ct.

552, 130 L. Ed.2d 462, any interpretive doubt is to be resolved in favor of the veteran, as seen in the case of *Shinseki v. Sanders*, 556 U.S. 396, 129 S. Ct. 1696 (2009).