

Attachment G - Fee Attorney Required Contract Provisions

Any agreement between the Service Provider and the fee attorney representing the Secretary must include the following provisions:

1. Legal services under this agreement are being provided to the Secretary of the United States Department of Veterans Affairs (VA) pursuant to the authority delegated in Title 38 United States Code Section 3730. The legal services shall include and be limited to bringing suit to foreclose a loan made or acquired by the VA and to recover possession of any property acquired by the VA. The activities of FEE ATTORNEY in bringing suit under this section shall be subject to the direction and supervision of the VA and of the United States Attorney General and to such terms and conditions as prescribed herein.
2. The FEE ATTORNEY must be a member in good standing of the Bar and will promptly notify VA of any change in status. The FEE ATTORNEY must be experienced in mortgage foreclosure and eviction matters.
3. The FEE ATTORNEY agrees to carry professional malpractice insurance with a commercial insurance carrier licensed to do business and shall, upon request, provide VA's contractor a copy of the policy.
4. At all times the FEE ATTORNEY will pursue the action with due diligence and the highest professional work quality so that VA may promptly secure its property rights. All suits involving the Secretary of VA shall be brought in the name of the Secretary of Veterans Affairs.
5. In foreclosure actions, where VA obtains title to the property at the liquidation sale, the FEE ATTORNEY will certify to VA that such FEE ATTORNEY has taken sufficient action to provide VA with good, marketable title to the property, and if any subsequent title defect is discovered that resulted from any error on the part of the FEE ATTORNEY, such defect will be corrected without additional cost to VA. The FEE ATTORNEY will not be responsible for any title defect that may have existed prior to the creation of VA's lien, or the failure of VA to have previously obtained a valid lien on the property. The FEE ATTORNEY will provide VA with sufficient documentation to enable VA to verify good title. The FEE ATTORNEY will also obtain a deficiency judgment against all known obligors unless directed otherwise by VA, and the FEE ATTORNEY shall be responsible for collecting or enforcing the collection of any deficiency judgments obtained pursuant to this contract.
6. Unless otherwise directed by the Solicitor General or VA, the FEE ATTORNEY will not handle the appeal of any adverse judgment. However, with the permission of the Solicitor General, a fee attorney may prosecute or defend an appeal in state court. A copy of any order or judgment adverse to the government shall be sent promptly to the VA Office of General Counsel National Practice Group (NPG).
7. If, after commencement of any action under this contract, a party to such action files a petition under the Bankruptcy Code (title 11, United States Code), the FEE ATTORNEY, unless directed otherwise by VA, will promptly file an appropriate action in Federal Bankruptcy Court to seek abandonment of the real property and for relief from the automatic stay.

8. In performing work under this agreement, the FEE ATTORNEY will be bound by the provisions of the Fair Debtor Collection Practices Act, 15 U.S.C. §§ 1692-1692o.
9. VA and VA's contractor agree to provide the FEE ATTORNEY with all information and documents within its possession that may be necessary to foreclose the loan or obtain possession of the property. Since the information to be disclosed is maintained and retrieved by individual identifiers in VA systems of records 16VA026, "Litigant, Tort Claimant, EEO Complainant and Third Party Recovery Files-VA," and 55VA26, "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA," and is thus subject to disclosure provisions of the Privacy Act, the FEE ATTORNEY agrees to be subject to the strict disclosure requirement of the Privacy Act and the criminal sanctions imposed for any violation. The Privacy Act Notification (48 C.F.R. § 52.224-1) and the Privacy Act clause (48 C.F.R. § 52.224-2) attached hereto, and incorporated into the contract. Similarly, the FEE ATTORNEY is subject to the VA records confidentiality statutes (38 U.S.C. §§ 5701, 7332), and implementing regulations, the violation of which may involve the imposition of criminal penalties.
10. FEE ATTORNEY shall hold United States harmless for any negligence or misconduct, intentional or unintentional, by the attorney which subjects the United States to a claim or suit for damages based on the conduct of the attorney.
11. No action will be filed by a fee attorney under this contract where a Federal agency other than VA would be a proper party to such action or otherwise has an interest in the property or action without prior approval of VA and the United States Attorney for the district in which the property is situated.
12. In any case in which substantial legal issues are raised (such as the construction or constitutionality of federal statutes, or issues which might affect enforcement policies or have significance for the government as a whole), where counterclaims are raised involving claims arising under other federal programs, or attempts are made to file counterclaims as class actions, the fee attorney shall notify the NPG. In such cases, the VA, the Department of Justice, or the United States Attorney shall have the right to assume primary responsibility for the litigation.
13. The FEE ATTORNEY will keep the NPG informed of all significant developments in all actions handled under this agreement; if any substantial legal issues are raised or if any unique or unusual defenses or any counter-claims are raised by any adverse party; if any obligor files a petition under the Federal Bankruptcy Code; if, for any reason, it appears judgment will be unduly delayed; if at any time it appears that the United States or any Officer or Agency thereof other than VA becomes or should be a party to or otherwise has an interest in any action; or an adverse Judgment was rendered against the VA.
14. The FEE ATTORNEY further agrees to provide NPG with copies of requested pleadings, where required, also provide copies of all such pleadings to the United States Attorney with jurisdiction.
15. The FEE ATTORNEY shall provide the Service Provider with copies of all pleadings filed for submission to the NPG. Additionally, the FEE ATTORNEY shall provide the NPG, through the

Service Provider, with specific requested statistical data as well as pleadings filed to comply with VA oversight needs. VA will provide the Service Provider with information regarding specific U.S. Attorney offices that require submissions of pleadings and of the required submissions to the NPG.

16. The Attorney General or VA may at any time, in their sole discretion, require the FEE ATTORNEY to cease all work in any case or all cases previously assigned, and transfer such case(s) to VA or to the United States Attorney, as directed. The FEE ATTORNEY agrees to cooperate completely and fully with VA or the United States Attorney by turning over all files and related papers on the case(s) and by making him/her self available for consultation concerning the case(s) as necessary. In that event, VA shall have no liability to the FEE ATTORNEY other than for the fair value of work actually performed.
17. The FEE ATTORNEY shall keep the NPG informed of all significant developments in all actions handled under this agreement and will promptly notify the NPG by electronic transmission or by letter as designated by the Service Provider. All legal notices to VA shall be sent, unless otherwise directed in writing, to the NPG.
18. The FEE ATTORNEY does not have authority to accept or reject any settlement of an action referred under this agreement, or to terminate collection action on any claims referred. Any settlement offer, including payoffs, reinstatements, voluntary conveyances, and purchase offers shall be referred to VA for consideration.
19. VA may either on its own or at the discretion of the Attorney General of the United States terminate this agreement at any time and for any reason whatsoever, such decision to terminate being placed with the total discretion of VA or the Attorney General. The parties agree that the decision to terminate a contract with A FEE ATTORNEY shall be totally and absolutely unreviewable on any basis or for any reason by any Federal or State court, Federal or State administrative agency, or by any person or body. Termination of this agreement under this paragraph shall be without any liability except for the fair value of work actually performed prior to termination, plus out of pocket expenses.
20. The FEE ATTORNEY agrees that, during the term of this agreement for a period of sixty (60) days after the completion of the last case handled under this contract that involves VA, that he/she will not represent a client in any litigation against VA. For purposes of this contract, "litigation against VA" does not include a foreclosure or title action where the public records shows VA has an interest in the property, the FEE ATTORNEY's client does not dispute such interest, and VA is named only as a necessary party to such action.
21. The FEE ATTORNEY will not represent any parties named as a defendant in a foreclosure action in which the FEE ATTORNEY represented VA pursuant to this agreement, or any of their spouses or relatives within the first degree of consanguinity, where any claim or cause of action of such parties against the United States accrued or could have accrued prior to the referral of the foreclosure action to the FEE ATTORNEY or which first accrued or could have accrued from the referral of the foreclosure action until the passage of one (1) year after the completion of the said foreclosure action.

22. The Secretary of Veterans Affairs, may resolve any dispute between VA and the FEE ATTORNEY arising incident to this agreement. It is the explicit intent of the parties that the Secretary's decision with respect to such dispute shall be totally and absolutely unreviewable on any basis or for any reason whatsoever by any Federal or State court, Federal or State administrative agency, or by any person or body.
23. The VA or DOJ shall have the right to terminate the contractor/fee attorney's role in any specific litigation or to assume primary responsibility for the litigation.