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The Military Divorce Assumption Report

Release of liability, assumption and entitlement, in both directions: the veteran who keeps the house, and the veteran who leaves.

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> *VA does not require the servicer to complete an assumption to release a spouse ... if the request is made due to a decree to dissolve the marriage ... awarding the property to the Veteran.*
>
> VBA CIRCULAR 26-23-10 · PARAGRAPH E

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Prepared for family law attorneys, mediators and divorce financial professionals. It describes what the loan system requires of lenders and servicers. **It is not legal advice.**

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START HERE

Which way is the house going?

Almost everything written about VA loans in divorce assumes the veteran is leaving. In most files, the veteran is staying. The two directions are governed differently, cost differently, and fail differently, and the first question on any VA file is which one you are in.

THE FORK

Direction one. The veteran keeps the house and the non-veteran spouse wants off the loan. This is the common case. It is also the easier one, and VA has said in terms that **no assumption is required**. Most servicers do not know that. *Section two.*

Direction two. The veteran leaves and someone else takes the house. This is the case with the lasting consequence, because the veteran's entitlement does not come back. *Section four.*

Both directions share one thing, and it is the source of most of the trouble in this area. What everyone calls "release of liability" is three separate acts, granted by different parties, and obtaining one does not produce the others.

THE DISTINCTION THE WHOLE REPORT TURNS ON

1. VA approval of the assumption. Granted by the loan holder, or by VA on appeal. Permits the transfer without the loan being called. *38 U.S.C. § 3714; 38 C.F.R. § 36.4303(l).*

2. VA release of liability. Granted by the Secretary. Extinguishes the veteran's debt to the United States if the loan later defaults, and constitutes VA's consent to a holder release. *38 U.S.C. § 3714(a)(1); 38 C.F.R. § 36.4326(h), and § 36.4326(f) for loans committed before March 1, 1988.*

3. Release from the note. Granted by the holder, by contract, or not at all. The regulation is written in the permissive: the holder *may* also release. **No statute or regulation compels it.** *38 C.F.R. § 36.4326(h)(2).*

And a fourth thing, which is not a release at all: restoration of entitlement. Governed by a different statute entirely. *38 U.S.C. § 3702(b).*

For a modern loan, the regulation setting out the release is 38 C.F.R. § 36.4326(h), and it does two things in sequence. The first is mandatory. The second is not:

> *If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person* ***shall be relieved of all further liability to the Secretary*** *with respect to the loan ... and the application for assumption shall be approved if the holder determines that: (i) The proposed purchaser is creditworthy; (ii) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs ...; and (iii) The payments on the loan are current.*
>
> *(2) Should these requirements be satisfied, the holder* ***may*** *also release the veteran or other person from liability on the loan.*
>
> 38 C.F.R. § 36.4326(h)

Read the two verbs against each other. The veteran *shall be relieved* of liability to the Secretary and the assumption *shall be approved*. The holder *may* also release the veteran from the note. That single word is the whole difference, and it is the reason a file can satisfy every VA requirement and still leave a client on the loan.

The statutory relief in both § 3713(a) and § 3714(a)(1) is written the same way: relief from "all further liability *to the Secretary*." Neither provision ever says "to the holder."

For loans committed *before* March 1, 1988, the older regulation says the same thing and says it more plainly, which is why it is worth quoting even though it governs a shrinking set of loans:

> *Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. ... The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof.*
>
> 38 C.F.R. § 36.4326(f), loans committed before March 1, 1988

VA supplies the consent. The holder supplies the release, or does not.

The VA form says the same thing on its face, in a note most people never read:

> *(NOTE: Use of this form does not affect the seller's liability on a VA-guaranteed loan from a private lender.)*
>
> VA Form 26-6381, Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan

DIRECTION ONE

The veteran keeps the house

This is the common file, and it has a short answer that is worth more to a client than anything else in this report: VA does not require an assumption to take the departing spouse off a VA loan when the veteran keeps the home.

Not a reduced assumption. Not an expedited one. None. VA said so in a circular that has been in effect since May 2023, under a heading it gave its own name.

> *VA does not require the servicer to complete an assumption to release a spouse, whose entitlement is not encumbered by the VA-guaranteed loan, from liability to a loan if the request is made due to a decree to dissolve the marriage or a legal separation agreement awarding the property to the Veteran whose entitlement is encumbered by the VA-guaranteed loan. The servicer may proceed with the spousal release, and update VALERI with the obligors as appropriate, if the Veteran or ex-spouse provides the following documentation to the servicer: (1) A copy of the decree to dissolve the marriage or legal separation agreement verifying the property was awarded to the Veteran whose entitlement is encumbered by the VA-guaranteed loan; and, (2) A recorded copy of the legal document (ex. quit claim deed) transferring ownership to the Veteran whose entitlement is encumbered by the VA-guaranteed loan.*
>
> VBA Circular 26-23-10, VA Assumption Updates, May 22, 2023, paragraph e, "Spousal Releases." Valid until rescinded.

VA's own lender training says the same thing in one sentence: "If the Veteran is awarded the property, the transfer does not require VA approval, assumption, or VA release letter."

WHAT THE SERVICER ACTUALLY NEEDS

Two documents, and nothing else:

1. The decree of dissolution or legal separation agreement, showing the property awarded to the veteran.
2. A **recorded** copy of the deed transferring ownership to the veteran.

No assumption package. No creditworthiness determination. No VA approval and no VA release letter. The servicer processes the spousal release and updates VALERI, which is VA's servicer reporting system, to show the corrected obligors.

Why this matters more than it sounds

Because the alternative is an underwrite. If a servicer routes the same request through the assumption machinery instead, the standard that applies is the one at 38 U.S.C. § 3714(a)(1)(B)(ii): the person taking the property must qualify "from a credit standpoint, to the same extent as if the purchaser were a veteran eligible under section 3710 of this title" for a new loan in the amount of the entire unpaid balance. That means the veteran must qualify alone, on one income, for the whole loan.

Many veterans in this position will not qualify alone. The loan was underwritten to two incomes. Under paragraph e that never comes up. Under an assumption it is dispositive.

SAY THE PARAGRAPH NUMBER

Paragraph e is permissive as to the servicer ("the servicer *may* proceed"), so a servicer that has not read it will default to what it knows, which is an assumption package. The practical move is a written request to the servicer enclosing the decree and the recorded deed, citing **Circular 26-23-10, paragraph e** by name and number.

If the servicer will not process it, Circular 26-23-27 on noncompliance in processing assumptions is the escalation, and it is set out later in this report.

Three things paragraph e does not do

It does not release the spouse from the note. Everything in section one still applies. A VA release runs to the government. Whether the departing spouse is off the promissory note, and therefore off the credit report and out of reach of a deficiency, is a separate act by the holder. Get it in writing.

It does not work if the departing spouse is also a veteran whose entitlement is on the loan. Paragraph e is written for "a spouse, *whose entitlement is not encumbered* by the VA-guaranteed loan." Where both spouses are veterans and both entitlements were used, the parties are back to a full assumption with substitution of entitlement. Establish whose entitlement is actually charged, from the Certificate of Eligibility or the loan file, before assuming anything.

It does not restore or free up anything for the veteran. The veteran keeps the house, keeps the loan, and keeps the entitlement charge against it. That is the correct outcome and it is not a loss, but it is worth saying plainly to a client who has been told that removing their ex-spouse will "free up" their VA benefit. It will not. See section four.

An open question we could not resolve. Circular 26-23-10 sets an assumption processing fee and a funding fee, and paragraph e says a spousal release is expressly *not* an assumption. The circular does not say whether either charge applies to a paragraph e release. We found no VA text resolving it. It is worth asking the servicer to identify the authority for any fee charged on a paragraph e spousal release.

The clause that protects the transfer runs both ways

The anti-acceleration clause discussed in the next section is drafted in terms of "the borrower," not "the veteran," and that is not an accident. Where both spouses signed the note, each is a borrower and each is the spouse of a borrower. The clause fits whichever way the house is going.

The companion regulation makes the drafting deliberate. Note the two different words in one sentence: "If **a veteran** requests a release of liability under paragraph (f) of this section, or if **a borrower** requests a release of liability pursuant to § 36.4309(c)(1)(vii)..." (38 C.F.R. § 36.4326(i)). The veteran-specific route and the divorce route are described in different terms on purpose.

One asymmetry to know about. Section 36.4326(i) gives the right of appeal to "the transferee," which in this direction is the veteran keeping the house. **A departing non-veteran spouse who is refused a release has no express appeal right** under that paragraph. Their leverage is the decree, the servicer's own obligations, and Circular 26-23-27.

THE REFINANCE PATH

What changes if the loan has to be replaced

Where paragraph e is refused, or where the veteran needs cash out to fund a buyout, the file becomes a refinance. Two routes, and the rules are not intuitive.

The streamline refinance runs one direction only

An Interest Rate Reduction Refinance Loan can be used to leave the veteran alone on a new loan and drop the departing spouse. It cannot be used the other way. The regulation requires that "**the veteran** owns the dwelling or farm residence securing the loan" and either occupies it or "previously occupied the dwelling or residence as his or her home and certifies" to that (38 C.F.R. § 36.4307(a)(2)). If the veteran is coming off the loan and off title, there is no veteran who owns the dwelling and the predicate collapses.

THE REASON SERVICERS LIKE THIS ROUTE, AND THE REASON TO BE CAREFUL WITH IT

An IRRRL is **not credit underwritten**. The VA credit standards at 38 C.F.R. § 36.4340 "do not apply to streamlined refinance loans," by the express terms of § 36.4340(a).

So an IRRRL can remove the departing spouse without anyone ever testing whether the veteran can carry the payment alone. It is fast, and it leaves a veteran solely liable on a loan that was underwritten to two incomes. Run the affordability question independently. That is the work, and nobody else in the transaction is doing it.

Cash out has an occupancy requirement with no back door

A cash-out refinance to fund a buyout is capped at "100 percent of the reasonable value ... of the dwelling" as determined by the Secretary (38 C.F.R. § 36.4306(a)), which is the VA appraised value, not the number the parties agreed on. It carries a net tangible benefit test, disclosed twice, "not later than 3 business days from the date of the loan application and again at loan closing."

And it requires the property to be "owned and occupied ... by the veteran as a home" (§ 36.4306(d)). Unlike the streamline provision, **there is no previously-occupied alternative**.

A sequencing trap worth naming. If the settlement contemplates the veteran cash-out refinancing to fund the buyout, the veteran has to still be living in the house at closing. An order or agreement giving the other spouse exclusive occupancy through the school year, or excluding the veteran from the residence pendente lite, can quietly remove the only refinance path that produces the money. The two dates need to be sequenced against each other.

Seasoning is the other timing item. Where the new loan does not exceed the payoff of the loan being refinanced, guaranty is unavailable until the later of six consecutive monthly payments and 210 days after the first payment due date (38 U.S.C. § 3709(c); 38 C.F.R. § 36.4306(b)). A recent VA loan cannot be refinanced on the timetable a decree might set.

DIRECTION TWO

The veteran leaves, and the entitlement does not come back

This is the part with lasting consequences, because it does not surface at the closing table. It surfaces years later, when the veteran tries to buy a house.

Entitlement is governed by 38 U.S.C. § 3702(b), which is a different statute from the one governing assumption and release. It lists the circumstances in which VA may exclude previously used entitlement. The one that matters here is paragraph (2):

> *A veteran-transferee has agreed to assume the outstanding balance on the loan and consented to the use of the veteran-transferee's entitlement, to the extent that the entitlement of the veteran-transferor had been used originally, in place of the veteran-transferor's for the guaranteed, insured, or direct loan, and the veteran-transferee otherwise meets the requirements of this chapter.*
>
> 38 U.S.C. § 3702(b)(2)

Three conditions, all required: the person assuming is **a veteran**, that veteran **consents to substituting their own entitlement**, and they otherwise qualify. In the ordinary divorce, where the ex-spouse taking the house is not a veteran, none of it is available.

VA states the consequence in one sentence:

> *The original Veteran's entitlement remains encumbered by the loan until the loan is paid in full. The seller would not receive a restoration of entitlement.*
>
> VBA Circular 26-23-10, VA Assumption Updates, May 22, 2023

WHAT THIS MEANS IN PRACTICE

A veteran can do everything correctly. Obtain VA approval of the assumption. Obtain a VA release of liability. Obtain a written release from the note. And still be unable to use the VA home loan benefit again until the ex-spouse pays off, refinances out of, or sells the house, which the veteran no longer controls and cannot compel.

Partial entitlement may remain available depending on the amount originally charged and the county loan limit, but the encumbered portion does not come back on any timetable the veteran can influence.

There is a further exposure that survives the release. Because VA's guaranty stays on the loan, a later default by the ex-spouse is charged against the veteran's entitlement even where the veteran owes VA nothing personally. VA's own buyer's guide is blunt about it:

> *You should be highly selective about who assumes your VA home loan. If there is a default on an assumed loan, it will count against the original veteran's entitlement and may affect your chance of securing another VA loan.*
>
> VA Home Loan Guaranty Buyer's Guide, April 2022

Why the statute produces this

Section 3702(b)(1) requires both that the property be disposed of *and* that the loan be repaid in full or that **the Secretary** be released from liability. Releasing **the veteran** under § 3714 does not release the Secretary. VA's guaranty continues. So none of the four exclusion routes in § 3702(b) is satisfied by a non-veteran assumption, and the entitlement stays charged until payoff.

Note on this paragraph: the result is stated by VA in Circular 26-23-10, quoted above. The reasoning is our reading of the statutory text, and VA does not set it out this way. Cite the circular for the result.

Two different forms, signed by two different people

The mechanical reason this goes wrong is that the paperwork separates cleanly and the settlement does not.

FORM	TITLE	WHO SIGNS	WHAT IT DOES
26-6381 Jan 2024	Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan	The departing veteran	Liability to the government only. Says on its face it does not affect liability to the lender.
26-6382 Jun 2023	Statement of Purchaser or Owner Assuming Seller's Loan	The person assuming	The assumer's undertaking.
26-8106 Jan 1991	Statement of Veteran Assuming GI Loan (Substitution of Entitlement)	The **assuming veteran**, if there is one	The only route to restoring the departing veteran's entitlement. Not available if the assumer is not a veteran.
26-10291 Apr 2024	Assumption Entitlement Acknowledgement	The **veteran seller**	VA's own disclosure of the entitlement consequence. Created because, in VA's words, "Veterans may not fully understand how an assumption may impact their available VA home loan guaranty entitlement."
26-1880 Dec 2025	Request for a Certificate of Eligibility	Either veteran	Where restoration is actually requested.

Filing 26-6381 without 26-8106 is precisely how the trap springs, and 26-8106 cannot be filed at all unless the person taking the house happens to be a veteran with entitlement to spare.

ASK WHETHER FORM 26-10291 WAS SIGNED

In April 2024 VA created **VA Form 26-10291, Assumption Entitlement Acknowledgement**, signed by the veteran seller, for the express purpose of making sure the veteran understands the entitlement consequence before the assumption closes. VA expects it "to be signed by the Veteran seller as soon as possible but no later than close," on applications received from 60 days after the circular's publication.

It is the one document in the process that exists to prevent the outcome this report describes. If a veteran client has already completed an assumption and did not sign one, that is worth knowing. If the assumption is still ahead of them, it is worth asking for by number.

VBA Circular 26-24-9, April 25, 2024. Valid until rescinded.

BOTH DIRECTIONS

A divorce transfer cannot be used to call the loan

VA regulation lists transfers on which a holder may not exercise its due-on-sale option. Clause (vii) is the divorce clause:

> *A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4326.*
>
> 38 C.F.R. § 36.4309(c)(1)(vii)

Read the clause for what it does and does not do. It bars **acceleration**. It grants an **option to apply**. It does not release anyone from anything, and it does not oblige the holder to do so. A decree awarding the house to one spouse is complete protection against the loan being called and no protection at all against the other spouse remaining on the note.

Note also that it says "the borrower," not "the veteran," and that it describes "the spouse of the borrower" becoming sole owner. Where both spouses signed the note, the clause operates whichever way the house goes. The quitclaim itself is safe in either direction.

One provision does run in the departing spouse's favor, though only on older loans:

> *Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran.*
>
> 38 C.F.R. § 36.4326(f), loans committed before March 1, 1988

Against VA. Not against the holder, for the same reason as everything else in this report. There is no equivalent sentence in § 36.4326(h), which governs loans committed on or after March 1, 1988.

COST

The divorce funding fee exemption, and why $300 is not the number

Two things about cost are commonly gotten wrong, in opposite directions.

The 0.5% funding fee does not apply to a divorce assumption

The VA loan assumption funding fee is 0.5% of the loan balance, set by statute at 38 U.S.C. § 3729(b)(2), item (I). But VA's own circular carves out the divorce case, describing the permissible charges as including the:

> *VA funding fee (unless the assumer is exempt, or the transaction is the result of an unrestricted transfer, such as an assumption processed as the result of a divorce)*
>
> VBA Circular 26-23-10, Change 1, February 23, 2024, § 3(f)(i)(b)

On a $400,000 balance that is $2,000 that should not be charged. It is charged anyway often enough to be worth checking every closing disclosure against this sentence.

The processing fee is capped. The total cost is not.

The regulation caps the holder's processing fee, and the wording repays a careful reading:

> *On any loan to which 38 U.S.C. 3714 applies, the holder may charge a reasonable fee, not to exceed the lesser of $300 and the actual cost of any credit report required, or any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.*
>
> 38 C.F.R. § 36.4313(d)(8)

Two things about that sentence. Circular 26-23-10 treats it as a $300 ceiling for a holder with automatic authority, and sets $250 where the file must go to VA for prior approval, and that is how it is charged in practice. But read literally, the words "the lesser of $300 and the actual cost of any credit report required" cap the fee at the cost of the credit report, which is normally well under $300. We have found no authority construing the sentence. It is worth quoting exactly to a servicer rather than paraphrasing it as a flat $300.

Separately, in February 2024 VA authorized an additional regional charge **on top of** the processing fee:

> *The holder may charge the Assumption Locality Variance based on the geographical location of the subject property if an assumption closes. This may be charged as a local variance in addition to the fee described in paragraph 2 and other allowable fees.*
>
> VBA Circular 26-24-5, VA Assumption Locality Variance, February 26, 2024

REGION	LOCALITY VARIANCE	WITH THE PROCESSING FEE $250 prior approval to $300 automatic
West AK AZ CA CO HI ID MT NV NM OR UT WA WY	$463	**$713 to $763**
Northeast CT ME MA NH VT NJ NY PA RI	$409	**$659 to $709**
South AL AR DE DC FL GA KY LA MD MS NC OK PR SC TN TX VA WV	$404	**$654 to $704**
Midwest IL IN IA KS MI MN MO NE ND OH SD WI	$386	**$636 to $686**

Source: Circular 26-24-5 Exhibit A. Still referenced without amendment in VA's State Fees & Charges Deviations List dated February 17, 2026.

Plus credit report, recording fees and taxes, taxes and insurance and assessments, title examination and title insurance, and any locally approved deviations. And a closing constraint that is useful to know when a fee sheet arrives with something unfamiliar on it: "Fees and charges not expressly permitted above may not be charged to or paid by the assumer of a VA-guaranteed loan." (Circular 26-23-10, Change 1.)

TIME

The deadlines, and what to do when they are missed

The processing deadlines that bind holders are regulatory, not aspirational. The one that binds VA is not, as the table notes.

STEP	DEADLINE	AUTHORITY
Holder with automatic authority decides the assumption	**45 calendar days** from a complete package	38 C.F.R. § 36.4303(l); Circular 26-23-10
Holder without automatic authority forwards to VA	**35 calendar days**	Circular 26-23-10
Transferee appeals a disapproval to VA	**30 days** from written notice of denial	38 U.S.C. § 3714(a)(4)(C)(ii); 38 C.F.R. §§ 36.4303(l), 36.4326(i)
VA decides the appeal	**10 business days** not a regulatory deadline	VA Loan Guaranty Conference training deck, 2023. Marked for VA internal use. No statute or regulation sets a deadline for VA to decide an appeal.
Seller who failed to give notice: holder notifies VA	**60 days** after the holder learns of the transfer	38 C.F.R. § 36.4303(l)

The enforcement lever nobody uses

In December 2023 VA issued a circular addressed specifically to holders refusing or slow-walking assumptions. It names the failure modes, including the two deadlines above, and then does something unusual. It tells holders what VA will do to them.

> *When a holder willfully refuses to process an assumption package in accordance with 38 U.S.C. chapter 37 and associated regulations, such actions negatively affect Veterans' ability to use their earned VA-guaranteed home loan benefits, including selling their home through an assumption. Moreover, such a willful failure to comply with applicable law regarding assumptions constitutes a defense against VA's liability on the guaranty.*
>
> VBA Circular 26-23-27, Noncompliance in Processing Assumptions, December 20, 2023

The escalation is short and specific. VA notifies the holder. If after **seven calendar days** VA is not satisfied the holder is moving, or if at any point VA concludes the delay may cause irreparable harm to the veteran, VA inserts a notation in the loan file that it will pay no guaranty claim, and notifies Ginnie Mae that **the guaranty payable on the loan has been effectively reduced to $0**. It is restored when the assumption completes.

WHY THIS MATTERS TO A PRACTITIONER

A servicer that will not move on an assumption is not usually refusing on the merits. It is under-resourced and the file is not urgent. Circular 26-23-27 makes it urgent, because a guaranty reduced to zero and reported to Ginnie Mae is a consequence the servicer's own risk function understands immediately.

Circular 26-23-27 is still in effect. Its rescission clause reads: "This Circular is effective until rescinded." Complaints go through VA's Loan Guaranty contact channel, and VA's Regional Loan Centers can be reached at 877-827-3702.

A DATE THAT IS MISSTATED EVERYWHERE

March 1, 1988 is a commitment date

VA loans from before March 1, 1988 do not require approval to be assumed. Loans from on or after that date do. This is correct, and the way it is almost always written is not.

The dividing line is drawn twice in the statute, and for an ordinary VA purchase loan both provisions turn on **when the commitment was made**, not when the loan closed. Note the carve-out in subparagraph (B), which uses a closing date and applies only to loans financing the purchase of VA-acquired property under § 3733(a)(1):

> *This section shall apply—(A) in the case of loans other than loans to finance the purchase of real property described in section 3733(a)(1) of this title, only to loans for which commitments are made on or after March 1, 1988; and (B) in the case of loans to finance the purchase of such property, only to loans which are closed after January 1, 1989.*
>
> 38 U.S.C. § 3714(f)(1)

> *This section shall apply only to loans for which commitments are made before March 1, 1988.*
>
> 38 U.S.C. § 3713(c)

The regulations agree: 38 C.F.R. § 36.4326(f) says "the commitment to make the loan was made prior to March 1, 1988," § 36.4326(h) says "a commitment was made on or after March 1, 1988," and § 36.4303(l) uses the same formula. For a loan committed in late February 1988 and closed that spring, the difference decides whether the whole approval apparatus applies. The line was created by Pub. L. 100-198, the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, 101 Stat. 1315.

Two related points. Section 3713, the release-of-liability section, governs **only** pre-1988 loans, and so does its regulatory twin at 38 C.F.R. § 36.4326(f). For a modern loan the release mechanism is § 3714(a)(1) and 38 C.F.R. § 36.4326(h), and citing § 3713 or § 36.4326(f) for a 2021 loan is a citation to the wrong provision. It is the most common error in this area and it is easy to make, because the older pair is written more clearly than the newer. And no primary text affirmatively says pre-1988 loans are "freely assumable." That conclusion follows from the scope provisions, which is worth framing accurately in front of a lawyer.

THE RECORD

What is actually known about VA assumptions

Very little, and the little that exists is worth stating precisely because the alternative is repeating figures that do not hold up.

Volume

The only official counts come from congressional testimony by the Executive Director of VA's Loan Guaranty Service:

YEAR	VA LOAN ASSUMPTIONS PROCESSED
Calendar year 2022	**308**
Calendar year 2023	**2,244**

Source: Written statement of John E. Bell, III, Executive Director, Loan Guaranty Service, VBA, before the Subcommittee on Economic Opportunity, House Committee on Veterans' Affairs, February 15, 2024. An increase of more than 600%, which VA attributes to rising interest rates.

A second official figure corroborates the order of magnitude. VA's Paperwork Reduction Act notices for the assumption information collection (OMB Control No. 2900-0516) estimate **2,055 respondents**, and the collection is made once per respondent per assumption transaction. Reading that as an implied annual volume of about 2,055 assumptions is our inference, not something VA states; the notices never characterize the figure that way.

We located no assumption volume data published by VA since calendar year 2023. The FY2025 Annual Benefits Report reports 528,340 loans guaranteed and 119,458 interest rate reduction loans, and does not track assumptions at all. VA's February 2026 Report to Congress on the VA Home Loan Program is a study of buyer-broker compensation and would not carry assumption counts in any event.

How long it takes

There is no official cycle-time data on VA assumptions in existence. No VA report, no Office of Inspector General audit, no GAO study. VA has never published how long an assumption actually takes, and the only official acknowledgment that there is a problem is Circular 26-23-27 itself, which exists because holders were missing the deadlines.

> A NUMBER TO STOP REPEATING
>
> A figure of **156 days** circulates as though it were a measured average VA assumption timeline. It is not. It is a verbatim sentence from one consumer complaint quoted inside a CFPB report: *"I have been trying to assume the VA Mortgage Loan of my deceased husband since September 7, 2023. It [has now been] 156 days if anyone is counting."*
>
> It is a real person's real experience and it is worth citing as that. Presenting it as a program statistic will not survive the first person who checks.

What federal regulators have documented

The Consumer Financial Protection Bureau published an issue spotlight on December 17, 2024, *Homeowners face problems with mortgage companies after divorce or death of a loved one*. Under a heading devoted to refusals to release the original borrower, it reports:

> *Many successor homeowners report being told they cannot assume the loan even when they demonstrate their ability and willingness to repay the loan.*
>
> CFPB Issue Spotlight, December 17, 2024, under the heading "Refusals to release the original borrower from the loan even when the homeowner is paying the loan"

Important qualification. The spotlight draws on complaints received from December 2021 through August 2024, but it **states no counts, no percentages and no aggregate breakdowns**. It is entirely qualitative. Any source attributing a statistic to it is wrong. It also appears to be the last word: we located no CFPB report, supervisory highlight or enforcement action touching successors in interest, assumptions or release of liability since.

THE GAP

VA tells servicers what to do. It tells veterans nothing.

The qualification first, because it is real. VA *does* publish divorce-specific guidance, and it is the most useful thing in this report: paragraph e of Circular 26-23-10, and the assumption training that goes with it. But it is addressed to **servicers**. It is written in the vocabulary of loan administration, it lives in a circular index, and no veteran is going to find it.

Addressed to the veteran, there is nothing. VA's eligibility pages cover restoration of entitlement and do not mention divorce. The page on trouble making payments mentions restoration and does not mention divorce, assumption or release of liability. The Buyer's Guide covers assumption and restoration and does not address divorce. VA's only consumer-facing divorce-adjacent housing content concerns surviving spouses, which is a different benefit and should not be conflated with it.

A veteran going through a divorce with a VA loan on the marital home receives no VA guidance addressed to that situation. The generic pages are accurate and they do not tell that veteran the one thing they most need to know, which is in section two of this report.

One qualification, and it matters. VA does publish something addressed to the entitlement problem itself, just not to divorce: Form 26-10291, above, exists precisely because veterans do not understand what an assumption does to their entitlement. It is a disclosure inside the transaction rather than guidance a veteran could find while deciding what to agree to, and it is signed at or near closing, which in a divorce is months after the decisions that mattered were made.

PRACTICE

What to establish, in order

This is the lending side of the file. It is not drafting advice and it is not legal advice. It is the sequence a Certified Divorce Lending Professional works through, offered so that the questions can be asked while the agreement is still a draft.

IF THE VETERAN IS KEEPING THE HOUSE

The list below is written for the harder direction. Where the veteran retains, the sequence is much shorter and it starts in a different place:

1. Confirm whose entitlement is on the loan. If the departing spouse is not a veteran with entitlement charged, paragraph e is available.
2. Write to the servicer citing **Circular 26-23-10, paragraph e**, enclosing the decree and the recorded deed. Ask for a spousal release, not an assumption.
3. Ask separately, in writing, for the holder's release of the departing spouse *from the note*. Paragraph e does not do this.
4. Independently confirm the veteran can carry the payment alone, because on this route nobody else will check.
5. If a refinance is needed, sequence it against occupancy and seasoning before any date goes in the agreement.

1. **Establish the commitment date.**
   Before or on/after March 1, 1988 decides which statute governs and whether approval is required at all.

2. **Establish whether the loan is current.**
   Both § 3713(a) and § 3714(a)(1) condition release on it. A delinquent loan forecloses the whole path until it is cured.

3. **Establish whether the person taking the house can credit-qualify.**
   The standard is qualification "to the same extent as if the purchaser were a veteran eligible under section 3710" for a new loan in the amount of the unpaid balance. It is a full underwrite, not a courtesy.

4. **Establish whether the assumer is a veteran with entitlement available.**
   This single fact decides whether restoration of the departing veteran's entitlement is possible at all. If the answer is no, everyone should know before signing, not after.

5. **Ask the holder, in writing, whether it will release the departing spouse from the note.**
   That is a different question from whether it will approve the assumption, and the two have different answers. Approval of the assumption is compelled once the conditions are met. Release from the note never is.

6. **Confirm the funding fee is not being charged.**
   A divorce assumption is an unrestricted transfer under Circular 26-23-10, Change 1.

7. **Confirm what the entitlement position will be afterward, in writing.**
   Including how much remains available for the departing veteran to buy again, and on what event the encumbered portion comes back.
8. **Diary the deadlines.**
   45 days, or 35 days plus VA. If they pass, Circular 26-23-27 is the instrument, and the seven-day escalation is the part to quote.

CORRECTIONS

Nine things that are widely published and wrong

1. **An assumption is required to take a spouse off a VA loan.** Not where the veteran keeps the house. VBA Circular 26-23-10, paragraph e: "VA does not require the servicer to complete an assumption to release a spouse ... if the request is made due to a decree to dissolve the marriage or a legal separation agreement awarding the property to the Veteran." The decree and a recorded deed are the whole file.
2. **Removing the ex-spouse frees up the veteran's entitlement.** It does not. Where the veteran keeps the house, the entitlement stays charged to that loan until it is paid in full. It is not a bargaining chip and should not be traded for anything real.
3. **"Release of liability" removes the veteran from the mortgage.** It removes the veteran's liability to the government. On a modern loan, 38 C.F.R. § 36.4326(h)(2) says the holder *may* also release the veteran from the note, which is permission rather than obligation. On a pre-1988 loan § 36.4326(f) preserves "the liability of the veteran to the holder" in terms. VA Form 26-6381 says the same on its face.
4. **The decree transfers the obligation.** A decree obtains protection from acceleration under 38 C.F.R. § 36.4309(c)(1)(vii) and an option to apply for a VA release. It obtains nothing from the noteholder, which was not a party to it.
5. **An approved assumption restores the veteran's entitlement.** Only a substitution of entitlement by an assuming veteran does, under 38 U.S.C. § 3702(b)(2). Section 3714 does not contain the word "entitlement" anywhere.
6. **The 0.5% funding fee applies.** Not to a divorce assumption. It is an unrestricted transfer, per Circular 26-23-10, Change 1.
7. **Assumption costs the assumer $300.** The Assumption Locality Variance is additive and regional, so the realistic figure is roughly $636 to $763 before credit report, title and recording costs.
8. **Pre-1988 loans are those closed before March 1, 1988.** The statute and the regulations both turn on the *commitment* date.
9. **VA assumptions take an average of 156 days.** That is one complaint narrative, not a measurement. No cycle-time data exists.

SOURCES

Primary text, with links

Statute

- **38 U.S.C. § 3702(b)** Entitlement, exclusion and substitution. law.cornell.edu/uscode/text/38/3702
- **38 U.S.C. § 3713** Release from liability, pre-March 1 1988 loans. law.cornell.edu/uscode/text/38/3713
- **38 U.S.C. § 3714** Assumptions; release from liability. law.cornell.edu/uscode/text/38/3714
- **38 U.S.C. § 3729(b)(2), item (I)** Assumption loan fee, 0.50%. law.cornell.edu/uscode/text/38/3729
- **38 U.S.C. § 3709** Refinancing of housing loans: recoupment, net tangible benefit and seasoning. law.cornell.edu/uscode/text/38/3709
- **38 U.S.C. § 3710(e)** Refinance authority and the occupancy condition. law.cornell.edu/uscode/text/38/3710
- **Pub. L. 100-198** Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987, Dec. 21, 1987, 101 Stat. 1315. govinfo PDF

Regulation

- **38 C.F.R. § 36.4302(j)** Computation of guaranties or insurance credits; exclusion of previously used entitlement. ecfr.gov § 36.4302
- **38 C.F.R. § 36.4303(l)** Assumption processing and appeal. ecfr.gov § 36.4303
- **38 C.F.R. § 36.4309(c)** Due-on-sale, and clause (c)(1)(vii), the divorce transfer. ecfr.gov § 36.4309
- **38 C.F.R. § 36.4306** Refinancing. Paragraph (a), the 100 percent of reasonable value cap; paragraph (b), seasoning and recoupment; paragraph (d), the occupancy requirement with no prior-occupancy alternative. ecfr.gov § 36.4306
- **38 C.F.R. § 36.4307(a)(2)** Streamline refinance. The veteran must own and occupy or have previously occupied. ecfr.gov § 36.4307
- **38 C.F.R. § 36.4308(b)** A spouse's joinder does not reduce the guaranty, so the spouse's departure does not change the entitlement charge. ecfr.gov § 36.4308
- **38 C.F.R. § 36.4340(a)** The VA credit standards, and their express inapplicability to streamline refinances. ecfr.gov § 36.4340
- **38 C.F.R. § 36.4313(d)(8)** Assumption processing fee. ecfr.gov § 36.4313
- **38 C.F.R. § 36.4326** Subrogation and indemnity. Paragraph (f) governs loans committed before March 1, 1988; paragraph (h) governs loans committed on or after that date and contains the permissive "the holder may also release"; paragraph (i) carries the 30-day appeal. ecfr.gov § 36.4326

VA guidance

- **Circular 26-23-10**, VA Assumption Updates, May 22, 2023. **Paragraph e, "Spousal Releases," is the most important single paragraph in this report.** PDF
- **Circular 26-23-10, Change 1**, February 23, 2024. The divorce funding fee carve-out. PDF
- **Circular 26-23-27**, Noncompliance in Processing Assumptions, December 20, 2023. PDF
- **Circular 26-24-9**, New VA Form 26-10291, Assumption Entitlement Acknowledgement, April 25, 2024. PDF
- **Circular 26-24-5** and Exhibit A, VA Assumption Locality Variance, February 26, 2024. PDF · Exhibit A
- **Circular 26-24-17**, Secondary Borrowing Requirements on Assumption Transactions, August 11, 2024. PDF

- **VA State Fees & Charges Deviations List**, February 17, 2026. PDF
- **VA Home Loan Guaranty Buyer's Guide**, April 2022. PDF
- **VA funding fee and loan closing costs**, updated January 15, 2026. va.gov

The record

- **Statement of John E. Bell, III**, Executive Director, Loan Guaranty Service, House Committee on Veterans' Affairs, Subcommittee on Economic Opportunity, February 15, 2024. PDF
- **OMB Control No. 2900-0516**, Loan Guaranty: Processing Assumptions of VA-Guaranteed Home Loans under 38 U.S.C. 3714. 89 FR, May 29 and August 2, 2024.
- **CFPB Issue Spotlight**, Homeowners face problems with mortgage companies after divorce or death of a loved one, December 17, 2024. consumerfinance.gov
- **VBA Annual Benefits Report FY2025**, Loan Guaranty chapter. Assumptions are not tracked.

A NOTE ON WHAT WE COULD NOT VERIFY

The VA Lenders Handbook (M26-7) and the VA Servicer Handbook (M26-4) have been migrated to VA's KnowVA knowledge base, which does not serve retrievable text. We therefore cite no handbook chapter in this report. Where practitioners commonly cite M26-7 for assumption procedure, the citable authority is Circular 26-23-10 and 38 C.F.R. § 36.4303(l).

The statutory funding fee exemptions at 38 U.S.C. § 3729(c) are written as running to a veteran receiving compensation, to certain surviving spouses, and to Purple Heart recipients. Whether they reach a non-veteran assumer is not addressed in any primary text we located. In the divorce case the point is usually academic, because VA's circular treats the transaction as an unrestricted transfer for funding fee purposes.

A note on that phrase. "Unrestricted transfer" appears in Circular 26-23-10, Change 1 in the context of what may be charged. We have not found VA text defining it, and we do not read it as removing a divorce assumption from the approval requirements of § 3714, which are keyed to the commitment date rather than to the reason for the transfer. Treat it as a fee rule, which is how VA uses it, and not as an exemption from the process.

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The Divorce Lending Association has been advancing divorce mortgage planning as a professional discipline since 2011. It creates and governs the CDLP® designation and the REM-S™ certification, publishes practice standards and a code of ethics, and maintains a public national directory that any referring professional can check. It is an approved continuing legal education provider, an approved continuing judicial education provider, and an approved continuing education provider with CFP Board and the Institute for Divorce Financial Analysts.

This report is not legal advice and does not create an attorney-client relationship. It states what the VA loan guaranty system does and does not do, with citations to primary text, so that the financing question can be worked while the agreement is still a draft. Nothing here characterizes what any settlement agreement should say. Statutes, regulations and VA circulars change. Verify against the linked sources before relying on any point in a live matter.