

DECISION

119527
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-200167**DATE:** September 21, 1982**MATTER OF:** Leland D. Pemberton

DIGEST: Employee executed four deeds of trust to secure interim financing for purchase of residence pending execution of first mortgage 6 months later. Mortgage was used to pay off deeds of trust. Since deeds of trust and first mortgage were secured by employee's conveyance of security interest in the property, both sets of transactions may be regarded as part of total financial package essential to purchase of residence. Consistent with 50 Comp. Gen. 650 (1981) employee may be reimbursed escrow fee charged in connection with both transactions.

In this case, we find no objection to reimbursement of escrow fees and related costs paid by Leland D. Pemberton, a Forest Service employee, for both interim and primary financing of a home he purchased near his new duty station at Lee Vining, California.

The seller could not delay closing of the sale until approval of Mr. Pemberton's primary financing, a "Cal-Vet" loan from the State of California. Mr. Pemberton therefore obtained four temporary or interim loans from private sources, and to secure the loans he and his wife executed a deed of trust for each loan to a bank acting in the capacity of a trustee and escrow agent. For the purpose of the January 1980 purchase of the residence financed with the proceeds of those four loans, the bank charged him an escrow fee of \$120. At that time he also incurred a transfer tax and other costs associated with recordation of the grant deed. When the "Cal-Vet" loan was approved in June 1980, the bank opened a second escrow account. In addition to costs ordinarily associated with the processing of a first mortgage, the bank assessed Mr. Pemberton a fee

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which is characterized on the disclosure and settlement statement as for "4 reconveyances at \$30.00 each."

The certifying officer, National Finance Center, Department of Agriculture, asks whether the escrow and reconveyancing fees are reimbursable costs associated with the purchase of a residence. The certifying officer points out that those costs might be considered losses due to market conditions and therefore prohibited under paragraph 2-6.2e of the Federal Travel Regulations FPMR 101-7 (May 1973).

We have recognized that costs associated with certain types of interim financing may be reimbursed incident to an employee's purchase of a residence at his new duty station. For example, where an employee who had been unable to sell his residence at his old duty station encumbered it with a second mortgage as a means of providing interim financing for the purchase of a house at his new duty station, we held that costs associated with the second mortgage were reimbursable. 60 Comp. Gen. 650 (1981). In holding that reasonable and customary costs associated with the second mortgage could be reimbursed to the same extent as expenses connected with a first mortgage, we viewed the second mortgage transaction as part of a "total financial package" essential to the purchase of the new residence. As in Matter of Beirs, B-184703, April 30, 1976, which involved interim financing in the nature of a second mortgage against the new residence, we noted that an employee may not be reimbursed costs associated with that secured transaction that compensate the lender for the high risk involved.

On the other hand, we denied reimbursement where interim financing of a home involved a purely personal loan not secured by a mortgage, since no real estate transactions expenses were incurred in obtaining the loan. See 55 Comp. Gen. 679 (1976). In that decision we indicated that the prohibition in

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5 U.S.C. 5724a against reimbursement for losses on the sale of a residence is sufficiently broad to exclude reimbursement of any expenses relating to an interim financing loan needed to purchase a home at the new duty station because of delay in selling the former residence. To the extent that statement may be deemed to apply to financing secured by a mortgage against the employee's old or new residence, it is overruled by 60 Comp. Gen. 650 and B-184703, supra.

Mr. Pemberton's case differs from those cited above in that the four deeds of trust did not provide interim financing to supplement a first mortgage, but served as short-term financing pending the execution of a first mortgage. They, nevertheless, served a very similar purpose. Secured by the conveyance of an interest in the property being purchased, they facilitated that purchase pending availability of the permanent financing contemplated by the buyer. Like the second mortgage involved in 60 Comp. Gen. 650, we do not consider Mr. Pemberton's execution of the four deeds of trust extraordinary or unusual in light of the current real estate market so as to preclude reimbursement under the Federal Travel Regulations. We view Mr. Pemberton's execution of the four deeds of trust and their satisfaction out of the proceeds of the subsequently executed first mortgage as integral parts of a total financial package essential to the purchase of the residence at his new duty station. In this regard, his case is to be distinguished from that of an employee who refinances a residence.

In cases involving second mortgages executed either as permanent or interim financing, we have allowed reimbursement to the same extent as costs associated with a first mortgage. Matter of Beirs, supra. The fact that the purchaser pays similar costs in connection with multiple sources of financing does not preclude reimbursement if those costs are otherwise allowable. B-166698, May 27, 1969. Since the escrow fee charged by the bank in

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connection with Mr. Pemberton's purchase of the property and his execution of the four deeds of trust is in the nature of a charge that may be reimbursed incident to a first mortgage, Mr. Pemberton was properly reimbursed the \$120 amount of that fee.

In regard to the reconveyance fee assessed at the time the Cal-Vet loan was closed, it should be noted that we have specifically allowed reimbursement for the cost associated with a mortgage executed subsequent to the conveyance of title to the employee. Matter of Rideoutte, B-188716, July 6, 1977. The bank has explained that the \$120 fee for "4 reconveyances at \$30.00 each" was in fact a fee for an escrow opened at the time the Cal-Vet loan was approved and the interim loans were paid off. While the escrowed amount was not paid directly to the seller of the residence as in the usual transaction, but was used to satisfy Mr. Pemberton's obligations under the four deeds of trust, the fee is one that may ordinarily be reimbursed in connection with a first mortgage. Therefore, it may be reimbursed even though it is similar to the escrow fee reimbursed in connection with the January transaction.

Harry W. ...
Comptroller General
of the United States