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DECISION



13115 Rogers 722

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

FILE: B-194892

DATE: March 14, 1980

Claim For
MATTER OF: Donald F. Reynolds - Mortgage Prepayment Penalty]

DIGEST: Although prepayment penalty clause was not in security instrument, Government employee who incurred mortgage prepayment penalty when he sold his residence in connection with permanent change of station may be reimbursed in amount equal to 180 days' interest on loan balance at time of sale. Verbal agreement concerning prepayment penalty, which was made at time of purchase, may be considered to be incorporated in security instrument since it was inadvertently omitted from that instrument but reduced to writing several months before subsequent sale of residence.

AB 00042 W. D. Moorman, an authorized certifying officer of the Department of Agriculture, requests our decision as to whether a voucher representing a mortgage prepayment penalty may be certified for payment as a relocation expense.

Mr. Donald F. Reynolds, a Department of Agriculture employee, claims a mortgage prepayment penalty of \$1,502.51, incurred when he sold his residence in connection with a permanent change of station. The penalty provision was not contained in the mortgage document itself. *Reclaimant* Mr. Reynolds stated that a verbal agreement concerning penalties was made at the time of sale but was inadvertently omitted from the documents of sale. His verbal agreement was embodied in a written agreement executed approximately 7 months after the date of sale. The agreement specified the following penalty for prepaying the obligation:

"When the amount prepaid during any one year equals or exceeds 20% of the original principle *[sic]* amount of the loan, 180 days of interest on the amount prepaid shall be charged."

The \$1,502.51 penalty paid by Mr. Reynolds was calculated according to the above formula.

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Federal Travel Regulations, ~~paragraph 2-6.2d~~, authorize reimbursement for mortgage prepayment penalties under the following conditions: *when incorporated in the security instrument.*

"* * * A charge made for prepayment of a mortgage or other security instrument in connection with the sale of a residence at the old official station is reimbursable to the extent the terms in the mortgage or other security instrument provide for such cost. This prepayment penalty is also reimbursable when the mortgage or other security instrument does not specifically provide for prepayment, provided such penalty is customarily charged by the lender, but in that case the reimbursement may not exceed 3 months' prevailing interest on the loan balance."

The claimant
In the instant case ~~Mr. Reynolds~~ made a verbal agreement at the time he bought his residence to pay 180 days' interest if he prepaid the loan. The prepayment penalty clause was inadvertently omitted from the security instrument. However, the agreement was reduced to writing several months prior to ~~Mr. Reynolds'~~ *employment* sale of the residence when he was transferred. Therefore, the agreement may be considered to be incorporated in the security instrument.

The claimant was to
~~In view of the above Mr. Reynolds~~ may be reimbursed the penalty paid if his claim is otherwise proper.

Milton J. Fowler
FOR THE Comptroller General
of the United States