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property and the tribe's constitution or charter does not specifically authorize a mortgage of such property, the mortgage must be authorized by tribal referendum.

(c) *Waiver of immunity.* The appropriate tribal official(s) will execute on behalf of the tribe and in favor of FmHA or its successor agency under Public Law 103-354 a waiver of any immunity from suit or liability which it possesses. The waiver will be approved by the Secretary of the Interior or his authorized representative.

(d) *Mortgages or assignments to third parties.* At the time of loan closing an agreement will be obtained from the tribe that as long as any indebtedness on the loan is outstanding it will not, without the written consent of FmHA or its successor agency under Public Law 103-354;

(1) Give assignments or pledges to other parties of income, revenue, or other property assigned or pledged to FmHA or its successor agency under Public Law 103-354.

(2) Mortgage, sell, or otherwise dispose of any land (except sales to tribal members for market value) regardless of whether it is or is not mortgaged to FmHA or its successor agency under Public Law 103-354.

(3) This agreement will be submitted to the Office of the General Counsel (OGC) for review as to content and validity. For trust lands, a copy will be forwarded to the BIA. For other than trust lands, it will be recorded in the land records if OGC advises that such recordation is legally necessary.

(e) *Land acquisition, debt service, and reserve accounts.* The following accounts will be established at the time of loan closing. A properly bonded official of the tribe will receive the monies for each account and issue receipts therefor. The bonded official will deposit all such monies in the appropriate trust or counter-signature accounts. As a basis for withdrawals, the deposit agreement for each account will require the signatures of appropriate tribal official(s) and the FmHA or its successor agency under Public Law 103-354 County Supervisor or a BIA official, depending on whether the account is a BIA trust account or an FmHA or its successor agency under

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Public Law 103-354 supervised account in a commercial bank.

(1) *Land acquisition account.* The loan funds will be deposited in this account which will be established as a "Supervised Bank Account." If funds in this account exceed \$100,000, it shall be secured by the financial institution in advance in accordance with U.S. Treasury Department Circular No. 176.

(2) *Debt service account.* A debt service account will be established at the time of loan closing for deposit of income assigned to FmHA or its successor agency under Public Law 103-354 to be used in making repayments on the loan and payments to the reserve account.

(3) *Reserve account.* This account will be established for debt service reserve purposes. On or before the first installment due date, an amount equal to one-tenth ($\frac{1}{10}$) of the amount to be paid annually on the loan will be deposited in this reserve account. An equal amount will be deposited in the account during each succeeding year until a full annual payment is accumulated.

(i) Funds in the reserve account may be used to make repayments on the loan when the tribe cannot meet the installments from other sources as they fall due. Any funds used for that purpose will be replaced as soon as possible before the next installment due date.

(ii) The reserve fund may be invested in short-term investments that are issued, guaranteed, or insured by the Federal or a State Government and name FmHA or its successor agency under Public Law 103-354 as co-owner.

[39 FR 3662, Jan. 29, 1974, as amended at 46 FR 36106, July 14, 1981]

§ 1823.409 Security.

All loans will be secured in a manner that will adequately protect the interests of FmHA or its successor agency under Public Law 103-354. Ordinarily, the security will include a lien on land acquired with loan funds plus assignment(s) of income. However, the security may consist only of assignments of income if the State Director determines that it will provide as good or better security than the land acquired with loan funds. Such security may be supplemented by security interests in

personal property which is available and needed to protect the interests of FmHA or its successor agency under Public Law 103-354.

(a) *Land plus assignments of income.* When land security is taken, it will be coupled with assignment(s) of uncommitted tribal, trust, or other income sufficient to cover loan repayments and payments to the reserve account.

(b) *Assignments of income without land security.* One or more assignments of income determined to be sufficient to cover the installment repayments plus reserve on the loan will be taken using exhibit C in this subpart N as a guide. The assignment may consist of one or more of the following:

(1) *Assignment of uncommitted income.* A general assignment of uncommitted tribal, trust, or other income, together with a BIA Subordination Agreement using exhibit D in this subpart N as a guide. A statement will be obtained from BIA on the amount of such income that will be available to cover repayments and payments to the reserve account.

(2) *Assignment of land sale or lease income.* An assignment of any net proceeds from the sale, lease, or other disposition of real estate, including minerals, timber, water, water rights, or other interests in real estate, if a real estate mortgage is not taken on such property.

(3) *Assignment of other income.* An assignment or pledge of other income or revenue.

(c) *Recordation of assignments.* Each assignment of income will be approved by BIA and recorded in the appropriate public records.

§ 1823.410 Appraisals.

The amount of loan funds used to acquire property will not exceed its market value as determined by FmHA or its successor agency under Public Law 103-354. Market value will be based on an appraisal made by authorized FmHA or its successor agency under Public Law 103-354 personnel, BIA appraisers or appraisers approved by the State Director. The value of any existing buildings that pass with the land will be deducted from the market value.

[43 FR 18161, Apr. 28, 1978]

§ 1823.411 Land rights.

Title to land acquired may, with the approval of the Secretary of the Interior or his designee, be in the name of the United States in trust for the tribe.

§ 1823.412 Loan docket.

The loan docket will consist of those items set forth in exhibit A. Forms and guides are available in all FmHA or its successor agency under Public Law 103-354 County Offices. Part of the docket will be prepared by the tribe with the assistance of BIA in accordance with exhibits A(1), B, C, and D of this subpart N. FmHA or its successor agency under Public Law 103-354 will provide items in exhibit A(2) of subpart N.

§ 1823.413 Loan approval.

State Directors are authorized to approve all loans except those in excess of \$500,000 which must first be authorized by the National Office. Information to be furnished the National Office will include the completed loan docket, proposed letter of conditions to be met by the applicant, any comments of OGC, and the State Director's recommendations. The State Director will forward an executed Form FmHA or its successor agency under Public Law 103-354 440-1, "Request for Obligations of Funds," to the Finance Office for each loan approved. If approval was authorized by the National Office, a copy of the memorandum authorizing approval will be attached to the Form FmHA or its successor agency under Public Law 103-354 440-3. An executed Form FmHA or its successor agency under Public Law 103-354 440-1 will be forwarded to the applicant on the same date the loan is approved, that is, on the same date it is forwarded to the Finance Office.

[39 FR 3662, Jan. 29, 1974, as amended at 41 FR 7488, Feb. 19, 1976]

§ 1823.414 Title to security property.

The applicant will provide evidence of title satisfactory to the FmHA or its successor agency under Public Law 103-354 for all property that will serve as security for the loan.

(a) *Real estate security—(1) Trust property.* The applicant will request BIA to furnish Title Status Reports to the