

(2) *Release from liability.* If the total outstanding debt is not assumed, the Agency must make the following determinations before it releases the transferor from personal liability:

(i) The transferor and any cosigner do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer,

(ii) The transferor and any cosigner have cooperated in good faith, used due diligence to maintain the security against loss, and have otherwise fulfilled the covenants incident to the loan to the best of their ability, and

(iii) The transferee will assume a portion of the indebtedness at least equal to the present market value of the security.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4139, Feb. 3, 1986; 51 FR 6734, Feb. 26, 1986; 51 FR 13482, Apr. 21, 1986; 51 FR 40786, Nov. 10, 1986; 51 FR 45439, Dec. 18, 1986; 53 FR 7338, Mar. 8, 1988; 53 FR 10358, Mar. 31, 1988; 53 FR 17688, May 18, 1988; 53 FR 35785, Sept. 14, 1988; 56 FR 3396, Jan. 30, 1991; 56 FR 12646, Mar. 27, 1991; 56 FR 15825, Apr. 18, 1991; 58 FR 52654, Oct. 12, 1993; 60 FR 28321, May 31, 1995; 61 FR 35931, July 9, 1996; 62 FR 10157, Mar. 5, 1997]

§§ 1962.35–1962.39 [Reserved]

§ 1962.40 Liquidation.

(a) *Voluntary liquidation—(1) General.* When a borrower contacts the agency and asks about voluntarily liquidating security, the borrower will be sent attachments 1 and 2 of exhibit A of subpart S of part 1951 of this chapter or attachments 1, 3 and 4, and the preliminary application forms by certified mail, or the forms will be hand delivered at the County Office. The servicing notices which provide possible alternatives to liquidation provide a maximum of 60 days for the borrower to apply for servicing. Therefore, the agency will not discuss liquidation or methods of liquidation until 60 days after the borrower receives the notices except in serious situations which are documented in detail in the case file. During the 60-day time period the County Supervisor may answer questions regarding the servicing notices. After 60 days, the borrower will be told that liquidation can be accomplished by:

(i) Selling the security under § 1962.41 of this subpart,

(ii) Transferring the security under § 1962.34 of this subpart,

(iii) Conveying the security to the agency under Subpart A of Part 1955 of this chapter, or

(iv) Refinancing the debt with another lender.

The provisions of these regulations will be explained to the borrower.

(2) *Lien search.* The County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sales proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources causes undue delay which interferes with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, the agency will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(b) *Involuntary liquidation—(1) General.* When a borrower makes an unapproved disposition of security, the directions in §§ 1962.18 and 1962.49 of this subpart will be followed. In all other cases, when the County Supervisor, with the advice of the District Director, determines that continued servicing of the loan will not accomplish the objectives of the loan, or that further servicing cannot be justified under the policy stated in § 1962.2 of this subpart, liquidation of the account(s) will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter. When liquidation is begun, it is the agency policy to liquidate all security and EO property, except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for

minimum family living needs will not exceed \$600. However, only so much of the security and EO property will be liquidated as necessary to pay the indebtedness.

(2) *Farm Loan Programs loan cases.* In Farm Loan Programs loan cases, borrowers who are 90 days past due (60 days delinquent) on their payments must receive exhibit A with attachments 1 and 2 or attachments 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter in cases involving non-monetary default. The County Supervisor will send these forms to the borrower as soon as a decision is made to liquidate. The procedures set out in subpart S of part 1951 of this chapter shall be followed and any appeal must be concluded before any liquidation action (including termination of releases of sales proceeds) is taken. If the borrower fails to return attachment 2 of exhibit A of subpart S of part 1951 of this chapter and a preliminary application within 60 days, the County Supervisor will send attachments 9 and 10 or 9-A and 10-A, as appropriate, of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachments 4, 6, 6-A, 10, or 10-A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the borrower's account will be accelerated in accordance with §1955.15(d)(2) of subpart A of part 1955 of this chapter and paragraphs (b)(2) (i) and (ii) of this section. The County Supervisor will then attempt to repossess the security in accordance with §1962.42 of this subpart. If this is not possible, the case will be referred for civil action in accordance with §1962.49 of this subpart. Unmatured installments will be accelerated as follows:

(i) The District Director will accelerate all unmatured installments by using exhibits D, E, or E-1 of subpart A of part 1955 of this chapter except in cases referred to OGC for civil action, if the notice has previously been given.

(ii) Exhibits D, E, or E-1 of subpart A of part 1955 of this chapter will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only.

(3) *Lien search.* The County Supervisor will follow the directions set out in paragraph (a)(2) of this section.

(c) *Multiple loans and loans secured by both real estate and chattels.* Follow the provisions of §1965.26(c) of subpart A of part 1965 of this chapter for liquidating these loans.

(d) *Assignment of direct loans.* When liquidation of a direct loan is approved, the State Director will be asked by the official who approved the liquidation to immediately obtain an assignment of the loan to if the promissory note is not held in the County Office. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless essential to protect Government's interests and OGC recommends such action. However, other steps need not be held up pending assignment. If any problems are encountered in obtaining the assignment, OGC may be contacted for advice.

(e) *Protective advances.* (1) After attachments 1 and 2 or 1, 3, and 4 of exhibit A of subpart S of part 1951 of this chapter have been sent and if security is in danger of loss or deterioration, the State Director will protect Government's interest and approve protective advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of the Agency under §1962.44(a) of this subpart.

(ii) Premiums on insurance essential to protect FmHA or its successor agency under Public Law 103-354's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by the Agency's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or

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other similar official such as a local sheriff. However, if the official seizes the property and delivers it to the Agency for sale by the Agency, costs incurred by the Agency after delivery to the Agency will be paid.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;  
(ii) Current lien search report;  
(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) [Reserved]

(f) When a borrower's security property is liquidated voluntarily or involuntarily and there is an unpaid balance on the account, the County Supervisor will meet with the borrower within 30 days to assist the borrower in developing a debt settlement offer in accordance with subpart B of part 1956 of this chapter.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 4139, Feb. 3, 1986; 53 FR 35785, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 36592, Aug. 14, 1992; 57 FR 60085, Dec. 18, 1992; 61 FR 35931, July 9, 1996; 62 FR 10157, Mar. 5, 1997]

### § 1962.41 Sale of chattel security or EO property by borrowers.

Borrowers who are liquidating voluntarily and who have not been sent exhibit A and attachments 1 and 2 or 1, 3 and 4 of subpart S of part 1951 of this chapter will be processed in accordance with paragraph (a)(1) of § 1962.40 of this subpart before any sale occurs.

(a) *Public sale.* A borrower may voluntarily liquidate chattels by selling the property at auction in the borrower's own name. RD 455-3, "Agreement for Sale by Borrower (Chattels and/or Real Estate)", will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the County Supervisor. When EO property is involved delete from the Agency lien wherever it appears on the forms. No Agency official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive

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the proceeds of the sale due the Agency for application on the borrower's indebtedness.

(b) *Private sale.* The borrower may sell chattel security or EO property at a private sale if:

(1)(i) The borrower has ready purchasers and can sell *all* of the property for its present market value; or

(ii) The property is perishable; or

(iii) The property is of a type customarily sold on a recognized market; or

(iv) The property consists of items of small value or a limited number of items which do not justify public sale.

(2) Form FmHA or its successor agency under Public Law 103-354 1962-1 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified.

(3) Form FmHA or its successor agency under Public Law 103-354 455-3 is completed before the sale.

(c) *Government takes possession.* The borrower may also turn over possession of the chattels to the agency by signing Form RD 455-4, "Agreement for Voluntary Liquidation of Chattel Security." This form authorizes the agency to sell the security at either public or private sale. If the agency hires a caretaker, services should be obtained by use of Form AD-838, "Purchase Order."

(d) *Record of Sale.* The sale will be recorded on Form FmHA 1962-1.

(e) *Unpaid debt.* If the sale results in less than full payment of the debt, the servicing official will have the County Committee review the case to determine if the borrower can be released of personal liability in accordance with paragraph (f) of this section. The borrower will be notified of the County Committee's recommendation for or against a release of personal liability.

(f) *Release of liability.* The borrower and any co-signer may be released from personal liability to the agency when all the chattel security or EO property is sold at the present market value and the proceeds are applied on the loan accounts. If the County Committee recommends a release of liability based on the following comment, the comment will be typed on the County Committee Certification and executed by the committee, and be further processed and