

## § 1962.41

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

approved in accordance with § 1962.34(h) of this subpart:

In our opinion (name of borrower and any co-signer) does not have reasonable ability to pay all or a substantial part of the balance of the debt owed after the cash sale, taking into consideration his or her assets and income at the time of the conveyance. The borrower has cooperated in good faith, used due diligence to maintain property against loss, and has otherwise fulfilled the covenants incident to the loan to the best of his or her ability. (Name of borrower and any cosigner) has not been liable for a previous Farm Loan Programs (FLP) loan which was reduced or terminated in a manner that resulted in a loss to the Government. Therefore, we recommend that the borrower and any cosigner be released from personal liability for any balance due on the indebtedness upon completion of the transaction.

Form RD 1965-8, "Release From Personal Liability" will be given to the borrower to release him/her from liability. If a release from liability cannot be granted, the borrower will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The account will then be considered for debt settlement.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 13482, Apr. 21, 1986; 53 FR 35785, Sept. 14, 1988; 56 FR 15825, Apr. 18, 1991; 57 FR 60085, Dec. 18, 1992; 62 FR 10157, Mar. 5, 1997]

**§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.**

(a) *Repossession.* Except as provided in paragraph (d) of this section, prior to any repossession of agency security a borrower and all cosigners on the note must receive exhibit A and attachments 1 and 2, or 1, 3 and 4 of subpart S of part 1951 of this chapter and the application forms. The appropriate procedures of subpart S of part 1951 of this chapter must be followed and any appeal must be concluded. The County Supervisor will take possession of security or EO property when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, and if the prior lienholder does not intend to enforce the lien. See § 1955.20 of subpart A of part 1955 of this chapter.

(1) *Conditions.* The County Supervisor will take possession under any of the following conditions:

(i) When RD 455-4 has been executed. For EO property this form will be revised by placing a period after "interest" in the first sentence beginning "The Debtor" and deleting the remainder of that clause; deleting the words "collateral covered by the security instruments" in the second part of the sentence and inserting instead "property covered by the debtor's loan agreement which is referred to as the collateral."

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed RD 455-4.

(iv) When the property is delivered to the agency as a result of court action.

(v) When Form RD 455-5, "Agreement of Secured Parties to Sale of SecurityProperty," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to the agency on forms prepared or approved by OGC. When prior liens are paid, the payment will be made in accordance with RD Instruction 2024-A (available in any agency office) and charged to the borrower's account.

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) *Recording.* A list, dated and signed by the servicing official, of all security or EO property repossessed except for those items on Form RD 455-4, will be maintained in the borrower's case file. Whenever the servicing official is transferred to another position or leaves the agency or there is a change in jurisdiction, the District Director will give the succeeding servicing official in writing, the names of such borrowers and a list of the property repossessed in the custody of the servicing official and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care.* The County Supervisor will arrange for the custody and care of repossessed property as follows: