

§ 1965.18

7 CFR Ch. XVIII (1-1-01 Edition)

by OGC which is necessary to comply with State law.

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§ 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.

(a) *General.* Agriculture Stabilization and Conservation Service (ASCS) regulations, pursuant to approved legislation, permit the transfer of upland cotton, peanut, or tobacco allotments by one or more of the following transactions: (1) Sale, (2) lease, or (3) transfer by the owner to another farm owned or controlled by the owner. These regulations require, among other things, that no allotment be transferred from a farm which is subject to a mortgage or other lien, unless the transfer is agreed to by the lienholders. It is FmHA or its successor agency under Public Law 103-354's policy to approve the transfer of any crop allotments permitted by the ASCS regulations if the conditions and requirements of this subpart can be met. FmHA or its successor agency under Public Law 103-354 personnel should familiarize themselves with the States ASCS policies and requirements concerning the sale, lease, or transfer of allotments to assure compliance with established FmHA or its successor agency under Public Law 103-354 policies and servicing of security.

(b) *Authorization.* County Supervisors are authorized to approve a transfer of upland cotton, peanut, or tobacco allotment by execution of a completed Form FmHA or its successor agency under Public Law 103-354 465-1. County Supervisors are also authorized to execute the lienholder or mortgagee agreement on appropriate ASCS forms provided by ASCS for those cases in which a transfer is approved.

(c) *Transfer by sale.* Crop allotments enhance the value of a farm mortgaged to the FmHA or its successor agency under Public Law 103-354 and constitute security for the FmHA or its successor agency under Public Law 103-354 loan. Accordingly, when a borrower whose farm is mortgaged to the FmHA or its successor agency under Public Law 103-354 inquires about the sale of any of the allotted acres or requests the FmHA or its successor agency

under Public Law 103-354 to sign the required lienholder or mortgagee agreement, the request will be treated the same as for a sale of a portion of the security and approval of the sale can be granted only in accordance with the applicable conditions and requirements of § 1965.13 of this subpart. The sale proceeds may be used as authorized in § 1965.13(f) of this subpart.

(d) *Transfer of allotment by lease.* The County Supervisor has the authority to approve a lease of all or a portion of an allotment for a 1 year period, provided the lease or its terms will not adversely affect the repayment of the loan; leasing is not an alternative to or means of delaying liquidation; and the lease and use of proceeds will further the objectives of the loan. If a 1 year lease is approved, the lease proceeds may be used as farm income as outlined in § 1962.17(b) of Subpart A of Part 1962 of this chapter. Leases for a period of more than 1 year will be granted only with the concurrence of the District Director. When a lease is for more than 1 year, an assignment of the rental proceeds should be obtained.

(e) *Transfer of allotment by owner to other land owned or controlled by the owner.* A transfer by an owner to other land owned or controlled by the owner is normally interpreted by the ASCS as a permanent transfer and can be avoided only by stipulating in the mortgage approval that the transfer is to be considered as a lease for the appropriate number of years. This type of transfer will be approved only as a lease under conditions in paragraph (d) of this section to assure that the crop allotment on the security is not adversely affected.

§ 1965.19 Severance agreement.

Form FmHA or its successor agency under Public Law 103-354 440-26, "Consent and Subordination Agreement," will be completed when a borrower requests FmHA or its successor agency under Public Law 103-354's consent to a severance agreement, or other instrument of similar effect, so that items to be acquired by the borrower through other credit and subject to a chattel lien will not become a part of the real estate securing the FmHA or its successor agency under Public Law 103-354

debt. Some examples of items which may be acquired subject to a chattel lien are silos, storage bins, bulk milk tanks, irrigation or income producing facilities, non-farm enterprise facilities, and recreational equipment. County Supervisors are authorized to give FmHA or its successor agency under Public Law 103-354 consent by executing Form FmHA or its successor agency under Public Law 103-354 440-26 and any necessary severance agreements, provided that the following determinations are made:

(a) The financing arrangements are in the best interest of the Government and the borrower.

(b) The transaction will not adversely affect FmHA or its successor agency under Public Law 103-354's security position and will be within the borrower's debt-paying ability, and

(c) The facility does not exceed the borrower's needs, is modest in cost and design; and is otherwise in line with FmHA or its successor agency under Public Law 103-354 financing policies. OGC will be requested to approve any severance agreement submitted by a borrower that is of a type not previously approved for use in the State and, when necessary, to issue closing instructions. The State Director may request the OGC to prepare a severance agreement instrument for use in the State.

§ 1965.20 [Reserved]

§ 1965.21 Assignment and release of Soil Conservation or similar program payments.

The County Supervisor may take an assignment on income to be received under USDA Programs or similar contracts to protect the financial interest of the Government or to facilitate loan servicing. The assignments of all or a portion of the income from the assignment may be released to the borrower by the County Supervisor when not to the financial detriment of the Government, and when payments due on all FmHA or its successor agency under Public Law 103-354 loans have been made from other income or the assigned income is needed for family living and farm operating expenses. This income will *not* be shown on Form FmHA or its successor agency under

Public Law 103-354 1962-1, "Agreement for the Use of Proceeds/ Release of Chattel Security." The receipt of these proceeds and their planned use will be clearly identified on the current farm plan.

§ 1965.22 Deceased borrower.

Deceased borrower cases will be handled under § 1962.46 of subpart A of part 1962 of this chapter.

§ 1965.23 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled under § 1962.47 of subpart A of part 1962 of this chapter. For SFH loans, refer to subpart C of part 1965 of this chapter.

§ 1965.24 Servicing note-only cases.

Each loan made on a note-only basis without real estate security will be serviced in a manner consistent with the best interests of the FmHA or its successor agency under Public Law 103-354.

(a) Sale of real property on which improvements were made with note-only FmHA or its successor agency under Public Law 103-354 funds. Any loan evidenced only by an unsecured note will be collected by voluntary means at the time of the sale of the property, if possible. If collection is not possible, the loan may be assumed by the purchaser of the property on the terms of the note if the assumption is determined to be in the FmHA or its successor agency under Public Law 103-354's best financial interest. If collection or assumption cannot be effected, consideration should be given to settling the account in accordance with Subpart B of Part 1956 of this chapter, if it is eligible, obtaining judgment, or classifying it as collection-only. In case of a judgment sale, the State Director with the advice of OGC and the U.S. Attorney, will authorize an employee to attend the sale and if appropriate, enter a bid on behalf of the Government under Subpart A of Part 1955 of this chapter.

(b) Assumption of note-only when real property securing another FmHA or its successor agency under Public Law 103-354 loan is involved. When a borrower has an FmHA or its successor agency under Public Law 103-354 loan secured by real estate and another