

## § 1965.25

FmHA or its successor agency under Public Law 103-354 loan evidenced only by a note and the real estate is to be transferred and the entire secured real estate debt is to be assumed, all or a part of the unsecured note up to the present market value of the property in excess of existing liens must also be assumed.

[51 FR 4140, Feb. 3, 1986, as amended at 51 FR 45439, Dec. 18, 1986]

### **§ 1965.25 Release of FmHA or its successor agency under Public Law 103-354 mortgage without monetary consideration in certain cases.**

(a) *Additional real estate security owned by an entity member(s).* Real estate owned by a member(s) of an entity-borrower, which was taken as additional security for a loan secured by real estate, may be released if it is needed for the entity member(s) to finance a separate operation and the remaining real estate adequately secures the entity loan(s). A release will not be considered if a subordination can be approved for the same purpose. The County Supervisor will document in the case file why a subordination is not feasible.

(b) *Release of real estate from mortgage because of mutual mistake.* Land or buildings included in the mortgage through mutual mistake, when substantiated by the facts of the situation, may be released from the mortgage by the State Director. The release is contingent on a determination of the State Director, with the advice of the OGC, that a mutual error existed at the time such property was included in the Government's mortgage.

(c) *No evidence of indebtedness.* The FmHA or its successor agency under Public Law 103-354 mortgage may be released by the County Supervisor in situations where there is no evidence of an existing indebtedness secured by the mortgage in the records of the FmHA or its successor agency under Public Law 103-354 County, State, and Finance Offices.

(d) *Release of valueless liens.* State Directors are authorized to release FmHA or its successor agency under Public Law 103-354 mortgages or other liens when the mortgages or liens have no present or prospective value or when

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their enforcement would likely be ineffectual or uneconomical. This includes release of a *junior* lien on the borrower's dwelling financed with an SFH loan and located on a *nonfarm tract* when the junior lien was taken as additional security for a Farmer Program loan(s). This authority does not extend to valueless judgment liens or valueless statutory redemption rights except with the consent of the OGC. The following information will be obtained in determining present or prospective value:

(1) *Appraisal report.* A market value appraisal report on the security prepared by an FmHA or its successor agency under Public Law 103-354 employee authorized to appraise under §761.7 of this title.

(2) *Lienholders.* The names of the holders of prior liens on the property, the amount secured by each lien which is prior to the FmHA or its successor agency under Public Law 103-354, the amount of taxes or assessments, and other items which might constitute a prior claim. This information will be recorded in the running case record of the borrower's County Office case folder and submitted to the State Director for review.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35795, Sept. 14, 1988; 56 FR 15830, Apr. 18, 1991; 57 FR 18681, Apr. 30, 1992; 58 FR 44752, Aug. 25, 1993; 64 FR 62569, Nov. 17, 1999]

### **§ 1965.26 Liquidation action.**

(a) *Voluntary liquidation—(1) General.* When a borrower contacts FmHA or its successor agency under Public Law 103-354 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, and 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, FmHA or its successor agency under Public Law 103-354 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 paragraph (f) of this section.
- (ii) Transferring the security under §1965.27 of this subpart.
- (iii) Conveying all security to FmHA or its successor agency under Public Law 103-354 as outlined in subpart A of part 1955 of this chapter.
- (iv) Refinancing the Farm Loan Programs debt with another lender. The servicing official will explain the provisions of these regulations to the borrower.

(2) *Sale or transfer for less than secured debt.* If the property is to be sold or transferred for less than the total secured debts against it, the property will be appraised immediately to determine its present market value. The appraisal will be completed by an authorized agency employee in accordance with §761.7 of this title and placed in the borrower's case file. If a qualified agency appraiser is not available, the State Executive Director may contract for an appraisal in accordance with RD Instruction 2024-A (available in any agency office).

(b) *Involuntary liquidation*—(1) *General.* When the servicing official, 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 §1965.2 of this subpart, liquidation of the account will be accomplished as quickly as possible under this section and subpart A of part 1955 of this chapter.

(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 servicing official 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 complete application within 60 days, the servicing official will send attachments 9 and 10 or 9-A and 10-A of exhibit A of subpart S of part 1951 of this chapter. If the borrower fails to return attachment 4, 6, 6-A, 10, or 10-A of exhibit A of subpart S of part 1951 of this chapter within 60 days, the servicing official will submit the case to the District Director in accordance with the provisions of §1955.15 of subpart A of part 1955 of this chapter.

(3) [Reserved]

(4) *Acceleration of account.* When foreclosure is approved, acceleration of the account and demand for payment will be accomplished according to the applicable paragraphs of §1955.15 of subpart A of part 1955 of this chapter.

(c) *Multiple loans and loans secured by both real estate and chattels.*

(1) When a borrower is indebted to the agency for more than one type of FLP loan, a thorough study should be made of each loan and the effect liquidation of one or more of the loans would have on any and all other loans. When liquidation of one or more FLP loans secured by real estate and chattels is necessary, and it will jeopardize the repayment of or the accomplishment of the purpose of the other loans, liquidation of all real estate and all chattel security for all loans will be started at the same time. Chattel security will be liquidated under subpart A of part 1962 of this chapter, except when real estate is transferred in accordance with §1965.27 of this subpart.

(2) SFH loans on nonfarm tracts should not be routinely liquidated because the borrower could not be successful in the farming operation. If the nonfarm property secures only a SFH loan(s), it will not be liquidated unless the appropriate provisions of subpart G of part 1951 of this chapter have been met, including the offering of payment assistance and/or moratorium, if eligible. When the nonfarm security is also additional security for a farmer program loan(s), consideration will be

given to continuing with the SFH loan after the other security for the farmer program loan is liquidated provided:

(i) The borrower has acted in good faith, has satisfactorily accounted for all security, and has met loan obligations to the best of the borrower's ability;

(ii) All security for loans other than the SFH nonfarm security is liquidated either voluntarily or through foreclosure;

(iii) The borrower wishes to retain the dwelling and will likely have repayment ability to continue repaying the housing loan;

(iv) Provided the County Committee agrees to the compromise or adjustment offer in accordance with §1956.57(f) of subpart B of part 1956 of this chapter, the borrower will further agree to compromise or adjust the farmer program debt as follows:

(A) When the market value of the nonfarm SFH property is greater than the amount of the SFH debt (including total subsidy granted if subject to recapture of subsidy), the borrower will make a cash payment equal to his/her equity in the SFH property, and any additional amount he/she is able to pay, on the farmer program debt.

(B) When the market value of the nonfarm SFH property is less than the amount of the SFH total debt, the borrower will make a cash payment of any amount he/she is able to pay, and the lien to secure the FP debt will be released as a valueless lien.

(C) If the borrower cannot make a cash payment as outlined in paragraph (c)(2)(iv)(A) of this section, the County Supervisor will have the borrower execute an Equity Recapture Agreement similar to exhibit D of this subpart, (available in any RHS office), pledging to pay to RHS an amount equal to the difference between the SFH debt and the market value of the SFH security as of the date of acceleration of the FP loan(s). The amount will be based on a current appraisal of the SFH security property. The County Supervisor will notify the Finance Office in accordance with the Automated Data Processing Systems (ADPS) Manual when an Equity Recapture Agreement is executed. The original signed Agreement will be attached to the original SFH promis-

sory note and a copy to the borrower's RHS County Office file. The borrower's file will be retained in the RHS County Office until the equity is paid pursuant to the Agreement. The noncash credit will be applied as of the date the Agreement was executed. Under such an Agreement, the payment will be due when the borrower sells the SFH property, ceases to occupy it, or graduates to another lender. After the borrower executes the Agreement, the remaining FP debt may be settled as appropriate. An equity receivable account will be established by the Finance Office in the amount of the Equity Recapture Agreement, and the County Office will remit collection under the Agreement, in the same manner as an SFH subsidy recapture receivable. In addition, the following statement should be recorded in the body of Form RHS 451-2, "Schedule of Remittance:" Equity Receivable Payment.

(v) In some States FmHA or its successor agency under Public Law 103-354 is prohibited by State law from foreclosing the SFH loan when the nonfarm security is merely additional security for the farmer program loan(s). In this case, the Farmer Program real estate mortgage on the SFH property cannot be released and the Farmer Program debt cannot be settled unless the conditions set forth in paragraph (c)(2) (i), (iii), and (iv) of this section are complied with.

(3) RHS SFH loans on farm tracts must be considered for payment assistance and/or moratorium at the time servicing options are being considered for the FLP loan(s) prior to acceleration. The RHS county office file will be documented to show that payment assistance and moratorium were considered. When the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to a borrower who also has an RHS loan, and the dwelling is security for the farm loan(s) and is located on the farm tract, it will not be necessary for RHS to meet the additional requirements of subpart G of part 1951 of this chapter prior to accelerating the RHS loan accounts. The RHS accounts will be accelerated at the same time the Notice of Intent notices, set forth in subpart S of part 1951 of this chapter are sent to

the borrower. If it is later determined that the FLP loan(s) is to receive additional servicing in lieu of liquidation, the RHS loan will be reinstated simultaneously with the FLP servicing actions and may be reamortized in accordance with §1951.315 of subpart G of part 1951 of this chapter.

(d) *Operation of the security.* A borrower with farmer program loan(s) who without FmHA or its successor agency under Public Law 103-354 consent does not operate the farm or recreational facility is violating agreements with FmHA or its successor agency under Public Law 103-354. If the borrower requests consent to cease operating the farm, or the County Supervisor becomes aware of a failure to operate after the fact, the County Supervisor will fully develop the facts, and:

(1) If the borrower is not the farm operator, but is involved in the farming operation, i.e., management (Example: sharing in day-to-day activities and management decisions as well as the costs and returns of the operation), and will continue to occupy the security, the County Supervisor can give consent with concurrence of the District Director. For inoperative entities, at least one partner of the partnership, one joint operator of the joint operation, one stockholder of the corporation or one member of the cooperative must meet the involvement/occupancy criteria.

(2) If the failure to operate the security is due to old age, poor health, or death in the family and the borrower or the borrower's family will continue to occupy the security, the District Director can give consent. For inoperative entities, at least one partner (or family) of the partnership, one joint operator (or family) of the joint operation, one stockholder (or family) of a corporation or one member (or family) of a cooperative must meet the occupancy criteria.

(3) If the failure to operate the security will be compounded by the borrower or the borrower's family not occupying the security and the failure to occupy is due to conditions beyond the borrower's control, the State Director can give consent if it is determined that the borrower will reoccupy the property within a reasonable period of

time, not to exceed five years, and the conditions of paragraph (d)(1) or (d)(2) could then be met.

(4) If consent cannot be given after complying with the requirements of §1965.26(b) of this section pertaining to notice and appeals, such a borrower's accounts will be accelerated immediately in accordance with §1955.15(d)(2) of subpart A of part 1955 of this chapter, based on the failure to operate.

(5) When liquidation of an account is necessary because of failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement, in accordance with §1965.26(e) of this subpart.

(e) *Accelerated repayment agreement.* When liquidation of an account is necessary because of failure to graduate to other credit or for failure to operate, the State Director may, in lieu of foreclosure, permit the borrower to pay the account under an accelerated repayment agreement. The State Director will determine that:

(1) Authorization for repayment of the debt under an accelerated repayment agreement is necessary to protect the Government's financial interest,

(2) The borrower can reasonably be expected to meet the accelerated payments, and

(3) The borrower will continue to comply with other requirements of the loans and security instruments.

(4) When an understanding is reached with the borrower, Form FmHA or its successor agency under Public Law 103-354 1965-11, "Accelerated Repayment Agreement," will be prepared and executed in accordance with the Forms Manual Insert (FMI) for each note accelerated. Accounts rescheduled under Form FmHA or its successor agency under Public Law 103-354 1965-11 will be reclassified as NP loans. The balance of the debt will be scheduled for repayment in annual or monthly amortized installments. If the borrower has monthly income, monthly payments will be scheduled. If annual payments are scheduled, the first installment may be less than an equal amortized installment if it is due less than a full year after the date the agreement is executed and the borrower will not be

able to pay the first full amortized installment. If the borrower fails to meet any installment when due as provided in the agreement, foreclosure action will be initiated. Rates and terms authorized are:

(i) For real estate purpose loans secured by real estate when the remaining repayment period exceeds 10 years, the term generally will not exceed 10 years. In justified cases, the term may be up to 15 years. In no case may the term exceed the final due date of the note. An amortization factor for 20 to 25 years may be used, with a balloon installment due on the final due date. The interest rate will be that in effect for regular FO loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(ii) For loans for operating purposes secured by real estate when the remaining repayment period exceeds 2 years, the term may not exceed 5 years and in no case may the term exceed the final due date of the note. The interest rate will be that in effect for regular OL loans on the date the agreement is executed plus 1 percent or the interest rate of the note, whichever is greater.

(iii) For loans for either real estate or operating purposes when the remaining repayment period is less than 10 years or 2 years, respectively, the State Director may authorize a shorter term. For loans made for a combination of loan purposes, the State Director may authorize an accelerated repayment term of up to 10 years, not to exceed the final due date of the note. The interest rate will be as specified in (e)(4)(i) or (ii) of this section.

(f) *Cash sales.* This paragraph applies to a sale of *all* real estate security. Before any cash sale, farmer program borrowers must be sent Attachment 1 of exhibit A of subpart S of part 1951 of this chapter. When a cash sale of mortgaged real estate will not result in the secured debts being paid in full, the County Supervisor is authorized to approve the sale for an amount not less than the present market value of the property and release the Government's liens, provided:

(1) A substantial recovery can be made on the FmHA or its successor agency under Public Law 103-354 se-

cured indebtedness based on the recent appraisal report required by paragraph (a)(2) of this section.

(2) All the proceeds are applied on the mortgage debts in accordance with their respective priorities except authorized costs as specified in §1965.13(f)(2) of this subpart.

(3) Any applicable requirements of subpart G of part 1940 of this chapter must be met.

(4) The agency's liens against the security property are not released until the appropriate sale proceeds for application on the Government's claim are received. The release will be made on forms approved or prepared by OGC.

(5) When the debt is not paid in full and a deficiency judgment is not to be obtained, a release of liability of the borrower can be processed:

(i) The County Committee has recommended release of liability by determining that the borrower(s) and any cosigner do 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 their assets and income at the time of the sale; and that the borrower 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 by recommending that the borrower and any cosigner be released from personal liability for any balance due on the secured indebtedness upon completion of the transaction. This action will be documented by checking the appropriate block on Form FmHA or its successor agency under Public Law 103-354 440-2, "County Committee Certification or Recommendation," as specified in the Forms Manual Insert.

(ii) When the Agency debt less the market value and prior liens is \$1 million or more (including principal, interest, and other charges), release of liability must be approved by the Administrator or designee; otherwise, the State Executive Director must approve the release of liability. All cases requiring a release of liability will be submitted in accordance with exhibit A of subpart B of part 1956 of this chapter (available in any agency office).

(iii) The borrower has never been liable for any direct FLP loan or loan guarantee which was reduced or terminated in a manner resulting in a loss to the Government.

(6) If a release from liability cannot be granted, the borrowers will be sent a letter similar to exhibit F of subpart A of part 1955 of this chapter (available in any agency office). The servicing official will meet with the borrower within 30 days to assist the borrower in the development of a debt settlement offer in accordance with subpart B of part 1956 of this chapter. (available in any agency office).

(g) *Account balances.* When security property is sold for an amount not less than the market value or an assumption of an amount equal to the market value is approved, the account balance will be handled as follows:

(1) When the seller or transferor (and cosigner, if any) is not released from liability, the account balance after the assumption is processed, or cash proceeds are applied, will be settled according to subpart B of part 1956 of this chapter or reclassified to collection only.

(2) When the transferor will be released of liability Form FmHA or its successor agency under Public Law 103-354 1965-8 "Release from Personal Liability" will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

(3) In the case of a sale outside the program for less than the debt owed, Form FmHA or its successor agency under Public Law 103-354 1965-8 will be given to the borrower and otherwise distributed in accordance with the Forms Manual Insert.

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#### **§ 1965.27 Transfer of real estate security.**

When the mortgage requires the consent of the Agency to any proposed sale or other transfer of real estate security, the borrower should be reminded that before firm agreements have been

reached with a purchaser of all or a portion of the security, the borrower and purchaser should contact the County Supervisor concerning the proposed sale. Farm Loan Programs (FLP) loan borrowers must be sent attachment 1 of exhibit A of subpart S of part 1951 of this chapter within 3 working days after the borrower contacts the County Supervisor inquiring about a transfer. If a proposed sale would not result in the FLP accounts being paid in full at the time of sale, the County Supervisor should explain thoroughly the requirements of this section and §1965.13 or §1965.26 of this subpart, as appropriate. When the transferor is receiving a substantial down payment from the sale of the property, the purchaser must be required to contact other sources of credit in an effort to secure a loan for repayment of the FLP loan(s) in full. Transfer with assumption of real estate security on NP terms will be in accordance with subpart J of part 1951 of this chapter. When real estate security, including water, access development or other rights is to be sold and the mortgage requires the Agency's consent to the sale and the transaction cannot be approved under the appropriate sections of this subpart, the account will be liquidated as required in §1965.26 of this subpart or will be handled in accordance with §1965.27 (g) of this subpart. In accordance with the Food Security Act of 1985 (Pub. L. 99-198) after December 23, 1985, if a loan is being transferred and assumed by an eligible or ineligible transferee, and if an individual or any member, stockholder, partner, or joint operator of an entity transferee is convicted under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance (see 21 CFR part 1308, which is exhibit C to subpart A of part 1941 of this chapter and is available in any agency office, for the definition of "controlled substance") prior to the approval of the transfer and assumption in any crop year, the individual or entity shall be ineligible for a transfer and assumption of a loan for the crop year in which the individual or member, stockholder, partner, or joint operator of the entity was convicted and