

## § 1980.878

354 a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103-354 before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form FmHA or its successor agency under Public Law 103-354 449-30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30, lines 13 and 14.

(f) *Submission to National Office.* (1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraphs (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds that actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

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(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

### § 1980.878 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA or its successor agency under Public Law 103-354 guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

### § 1980.879 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA or its successor agency under Public Law 103-354 final loss claim is