

advantageous to the borrower, the tenants, and the FmHA or its successor agency under Public Law 103-354.

(v) If foreclosure action has been approved, consent to lease and use of proceeds will be granted only under directions from OGC or the U.S. Attorney, as appropriate.

(vi) When another lienholder's mortgage requires consent of that lienholder to a lease, written consent will be obtained prior to FmHA or its successor agency under Public Law 103-354 approval of the lease.

(vii) The authority to approve the lease of laundry facilities or commissary stores may be redelegated in writing to the District Director by the State Director.

(3) *Mineral leases.* Mineral leases will be handled according to §1965.113 of subpart C of part 1965 of this chapter except that all references to County Supervisor will be construed to mean District Director when applied to the Multiple Housing Programs.

(4) *Processing.* When a borrower requests consent to lease a portion of the security property or the District Director discovers that the borrower is leasing the security without consent, Form FmHA or its successor agency under Public Law 103-354 465-1, "Application for Partial Release, Subordination or Consent," will be prepared.

(i) The form will show the terms of the proposed lease and will specify the use of proceeds, including any proceeds to be released to the borrower.

(ii) The form will be submitted through the District Director to the State Director, along with a copy of the lease, official borrower case files, the District Director's comments and recommendations, and any other information pertinent to the transaction.

(iii) The State Director will review the material, obtain the guidance of OGC prior to indicating approval or disapproval on Form FmHA or its successor agency under Public Law 103-354 465-1, and provide additional servicing instructions to the District Director.

(f) *Consent of lienholders.* Before FmHA or its successor agency under Public Law 103-354 consents to any transaction which affects its security or lien position, the written consent of any other lienholders must be ob-

tained. The consent will include an agreement on the disposition of any funds resulting from the transaction and will be consistent with the respective loan program requirements.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 39640, Sept. 30, 1985; 56 FR 2257, Jan. 22, 1991; 58 FR 40956, July 30, 1993]

EFFECTIVE DATE NOTE: At 67 FR 78329, Dec. 24, 2002, §1965.61 was amended in paragraph (d) by revising the words "§1965.104(c) of subpart C of part 1965 of this chapter" to read "7 CFR part 3550" and in paragraph (e)(3) by revising the words "§1965.113 of subpart C of part 1965 of this chapter" to read "7 CFR part 3550", effective Jan. 23, 2003.

#### § 1965.62 [Reserved]

#### § 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to FmHA or its successor agency under Public Law 103-354.

Organizations which may be indebted to FmHA or its successor agency under Public Law 103-354 include, but are not limited to: public bodies, broadly-based nonprofit corporations, nonprofit organizations of farmworkers, associations of farmers, RCH consumer cooperatives, profit and limited profit corporations, trusts, profit and limited profit general partnerships, and limited partnerships. This section describes the policy of FmHA or its successor agency under Public Law 103-354 in approving changes of members, ownership interest, and transfer or issuance of stock in these organizations, to determine the continued eligibility of the borrower entity. It *does not* apply to the sale or exchange of title to the security property, or the conversion from one form of ownership to another such as changing a general partnership to a limited partnership. Stock, partnership, or membership changes which the State Director is not authorized to approve under the conditions of this section will be submitted to the National Office for handling.

(a) *Profit and limited profit corporations, general partnerships, limited partnerships, and trusts.* Ownership changes within the existing borrower entity will be processed as follows:

(1) Ownership changes totalling 100 percent of the ownership interests in a project within any consecutive 12-

month period will be treated as transfers and processed under the provisions of § 1965.65 of this subpart.

(2) Ownership changes in *excess of 50% but less than 100%* within the first five years of loan or assumption closing, will be subject to § 1965.65(a)(4) of this subpart which covers hardship provisions and the restrictions on subsequent changes. However, changes in only the limited partner interests in a limited partnership will not be subject to the restrictions of § 1965.65(a)(4) of this subpart when completed in accordance with the approved partnership agreement.

(3) Other ownership changes of 50% or less within any consecutive 12 month period will be processed without restriction.

(4) All changes of less than 100% will be processed according to paragraph (e) of this section.

(b) *Public bodies, broadly-based nonprofit corporations, or nonprofit organizations of farmworkers.* FmHA or its successor agency under Public Law 103-354 consent will not be required for broadly-based nonprofit corporations or nonprofit organizations of farmworkers indebted to FmHA or its successor agency under Public Law 103-354 to change or transfer membership. Each organization, however, must maintain the number and type of members required by its Articles of Incorporation and Bylaws. Organizations will only permit membership changes as authorized by the organizational documents previously approved by FmHA or its successor agency under Public Law 103-354. Should the minimum number of required members in any organization fall below that prescribed by their organizational documents, the following actions will be taken:

(1) The District Director will provide the State Director with a complete written report of the circumstances, including the organization's plan for obtaining additional membership, and the continued operation of the project. The District Director should submit this report only after he or she has personally met with the governing body and found that they will not be able or willing to comply with FmHA or its successor agency under Public Law 103-354 requirements. The report should be

precise and include recommendations on further servicing actions.

(2) The State Director will review the report and evaluate any adverse effect the noncompliance will have on the loan. If it appears that the interest of the United States will be adversely affected, the State Director will forward the material together with appropriate comments and recommendations, to the OGC for review and guidance in the continued servicing or liquidation of the account as appropriate. The State Director will provide the District Director with instructions for servicing the account.

(c) *Associations of farmers.* Changes in membership will be governed by the organizational documents previously approved by FmHA or its successor agency under Public Law 103-354 and any eligibility requirements set forth in program regulations. (See subpart D of part 1944 of this chapter.) In those cases where proposed membership changes are not covered in the documents or are in conflict with the provisions of subpart D of part 1944 of this chapter, case files will be submitted for National Office consideration.

(d) *RCH consumer cooperatives.* Changes in the membership of RCH consumer cooperatives will be processed according to the provisions of subpart E of part 1944 of this chapter.

(e) *Processing organizational membership changes.* Organizations are required by their loan agreement or resolution to obtain prior FmHA or its successor agency under Public Law 103-354 consent to transfer stock, or to transfer or change any interest in the borrower entity. (The admission or substitution of limited partners in a limited partnership does not require prior authorization. See paragraph (e)(3) of this section.) Therefore, when organizations request FmHA or its successor agency under Public Law 103-354 consent to: issue additional stock, transfer stock, change membership or membership interests other than limited partner interests in limited partnership, admit new or substitute general partners of any kind, withdraw general partners of any kind, alter the beneficiary of the trust, or when such a change has taken place without prior FmHA or its successor agency under Public Law 103-354

consent, the District Director shall process and submit Form FmHA or its successor agency under Public Law 103-354 465-1 to the State Director. The State Director is authorized under §1965.55(a) of this subpart to approve or disapprove these transfers or changes on Form FmHA or its successor agency under Public Law 103-354 465-1. For approval, the State Director must determine that the following conditions have been met:

(1) The borrower has provided a listing showing the name, address, Employer Identification or Social Security number, and percent of ownership of each member, stockholder, general partner, or beneficiary of a trust that will have an interest in the organization.

(2) All new or substitute general partners, and all new or substitute trustees, members, stockholders in privately held corporations, or beneficiaries that will hold an interest in the organization in excess of 10 percent have submitted a current, dated, and signed financial statement showing assets and liabilities, with information on the status and repayment schedule of each debt. (The admission of limited partner in a limited partnership is addressed in §1965.63(e)(3) of this subpart.) In cases involving publicly held corporation borrowers, borrowers will be required to notify FmHA or its successor agency under Public Law 103-354 of stockholders admitted to the organization in accordance with the approved articles of incorporated and bylaws. However, FmHA or its successor agency under Public Law 103-354 consent is required when there are changes in the overall corporate management or in the organizational documents. (All other changes in stockholders in publicly held corporations are subject to the requirements of this section.) All financial statements submitted must comply with the reporting requirements set forth in exhibit A-7 to subpart E of part 1944 of this chapter. A resume must also be submitted, together with a statement setting forth any identity of interest as described in exhibit A-7 to subpart E of part 1944 of this chapter. The resume should explain the past performance, experience, qualifications, and abilities of the indi-

vidual or organization, who is obtaining an interest in the borrower organization. A determination must be made before approval that the incoming individual or organization described in this section will not adversely affect the borrower's continued eligibility under the requirements of subpart E of part 1944 of this chapter.

(3) The admission of limited partners in a limited partnership on the basis of the limited partnership agreement previously approved by FmHA or its successor agency under Public Law 103-354 does not constitute a change requiring redetermination of eligibility. Borrowers admitting new or substitute limited partners are however required to notify FmHA or its successor agency under Public Law 103-354 at least annually with a listing showing the name, address, Taxpayer Identification number, and percent of ownership of each new or substitute limited partner. The borrower must also provide copies of any amendments to the organizational documents effecting such changes in the organization together with an opinion from the borrower's attorney certifying that the changes in limited partner interests have been completed in accordance with the approved partnership agreement.

(4) The borrower is unable to provide the housing or other facilities from its own resources and is unable to obtain the necessary credit from private or cooperative sources on terms and conditions that would enable the borrower to refinance the FmHA or its successor agency under Public Law 103-354 indebtedness and operate the project for amounts within the payment ability of those eligible to occupy the housing or benefit from the project. When tenants are benefiting from any FmHA or its successor agency under Public Law 103-354 or other Government subsidy program, the continued availability of the subsidy will be considered in making this decision. For profit and limited profit organizations, the assets of the individual general partners, members or stockholders will also be considered.

(5) The type of change must not adversely affect the operations of the project. *Liens may not be taken against the FmHA or its successor agency under Public Law 103-354 security.* Payments

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on any debt incurred for the purchase of the stock or interest in the organization will not be considered authorized debt payments and will not be included in project operations as a budgeted expense. In those cases where the withdrawing member or ownership interest proposes to use a security agreement or other document to secure an equity payment, the State Director must determine that:

- (i) The payment is not contingent on the planned sale of the project or additional ownership interests;
- (ii) An assignment of interests to secure a promissory note, in the case of a limited partnership, is restricted to the limited partners interests only and not the general partner interest;
- (iii) In cases other than the limited partner's interest in a limited partnership, that there is no reversionary interest held in the entity; and
- (iv) Any security agreement or equity note, clearly indicates the necessity of FmHA or its successor agency under Public Law 103-354 approval before any substitutions of interests take place, regardless of any default on the equity note.

(6) In the case of the sale of the interest of a general partner, or the admission or substitution of any general partner, in either a limited partnership or a general partnership, the new or substitute general partner must agree to assume the responsibilities and obligations of the original general partner under the terms of the FmHA or its successor agency under Public Law 103-354 promissory note, mortgage, and the borrower's partnership agreements. The assumption of any personal liability of the transferring general partner by the assuming general partner in a limited partnership may be waived by the State Director with the advice of the OGC if the organizational papers require that liability be limited to the assets of the partnership according to §1944.21(a)(2) of subpart E of part 1944 of this chapter. After consulting OGC, the State Director will require the new or substitute general partner to execute an agreement as follows for the inclusion in position 5 of the official case file:

ASSUMPTION OF ORIGINAL OR WITHDRAWING PARTNER'S OBLIGATIONS

In consideration for being approved by the Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) for admission as a general partner into \_\_\_\_\_ (the partnership), the undersigned hereby assumes all responsibilities and obligations of \_\_\_\_\_ under the terms of the Partnership Agreement dated \_\_\_\_\_, the terms of (a) (all) note(s) or assumption agreement(s) dated \_\_\_\_\_ in the respective amount(s) of \_\_\_\_\_, and the terms of the FmHA or its successor agency under Public Law 103-354 security instrument(s) taken on the partnership property dated \_\_\_\_\_ and filed for record in the \_\_\_\_\_ office at \_\_\_\_\_

Document No. or Book and Page No.

Date

Signature of New or Substitute Partner

(7) Any withdrawing stockholder, member, or partner personally liable for the FmHA or its successor agency under Public Law 103-354 indebtedness will not be released of liability unless the new stockholder, member, or partner is made personally liable for the FmHA or its successor agency under Public Law 103-354 debt on an agreement approved by OGC, and the State Director determines that the assets and net worth of the new stockholder, member, or partner are substantially the same as, or greater than, that of the party to be released.

(8) The State Director must determine that approval of the transaction will not adversely affect the FmHA or its successor agency under Public Law 103-354 program in the area, that the objectives of the loan will not be changed, and that the successful operation of the project will not be jeopardized. In making this determination, the State Director must consider the past performance, experience, qualifications and abilities of any individual or organization obtaining an interest in the borrower organization, other than a limited partner holding a minority interest in a limited partnership. Serious consideration must also be given to an individual having a record or reputation for discriminating against individuals because of their race, color, national origin, handicap or other prohibited basis.

(9) Organizational papers must be amended to reflect the changes and a copy submitted to FmHA or its successor agency under Public Law 103-354 to be retained in the case files. The amendment should specify that FmHA or its successor agency under Public

Law 103-354 must approve all membership changes (except the admission of limited partners described in §1965.63(e)(3) of this subpart) or transfers, if they do not already do so. OGC will review any proposed changes of beneficial interests in a trust to determine that all applicable program requirements have been met.

[49 FR 49590, Dec. 21, 1984, as amended at 56 FR 2257, Jan. 22, 1991]

**§ 1965.64 [Reserved]**

**§ 1965.65 Transfer of real estate security and assumption of loans.**

(a) *General.* The transfer may be approved only if it is determined that the transfer would ensure the further availability of the housing and related facilities for very-low, low, and moderate income families or persons and would be in the best interests of the residents and the Federal Government.

(1) The requirements of this section apply when:

(i) Title to the security property is transferred, either when the project is sold or through a change in the borrowing legal entity, such that the new entity is considered a distinct and separate legal entity from the original borrower;

(ii) An unauthorized sale of a project has occurred or will occur through a land contract or similar contract;

(iii) The liability for the FmHA or its successor agency under Public Law 103-354 indebtedness has been or will be assumed by an organization, entity or individual who is not presently liable for the debt;

(iv) Membership interests within a borrower entity have been or will be changed 100 percent within any consecutive 12-month period as indicated by §1965.63(a) of this subpart.

(2) When the mortgage or deed of trust requires FmHA or its successor agency under Public Law 103-354 consent to the sale or other transfer or real estate security, the borrower should be advised of its provisions. Before firm agreements are reached between the borrower and the proposed purchaser or transferee, the borrower should notify the District Director of the proposed sale or transfer. The District Director shall then explain the requirements of this subpart.

(3) Proposed transfers must not be the detriment of the FmHA or its successor agency under Public Law 103-354 or the tenant. LH loans will only be transferred under this subpart when they will continue to be used to provide housing for farm laborers as defined in subpart D of part 1944 of this chapter. Cooperative loans will only be transferred when they will be used for the purpose of providing low income rental housing to promote the general welfare of the community.

(4) The transfer of projects as defined in §1944.205 of subpart E of part 1944 of this chapter, in which the FmHA or its successor agency under Public Law 103-354 loan transfer is needed to remove a hardship which adversely impacts the present borrower and was caused by circumstances beyond the borrower's control, such as:

(i) Illness or death of the principals;

(ii) Court order requiring the division of security property;

(iii) The individual borrower faces serious financial difficulties due to circumstances beyond the borrower's control, which will force him/her out of operation. These circumstances do not include transferring the property to obtain the equity needed to permit the borrower to apply for additional FmHA or its successor agency under Public Law 103-354 loans or to raise capital to support the borrower's other financial interests not including the FmHA or its successor agency under Public Law 103-354 financed project. Borrowers under this type of hardship must be able to show that they have acted in good faith, demonstrated their managerial skills and financial abilities; and otherwise complied with all other agreements made with FmHA or its successor agency under Public Law 103-354. Hardship transfers due to construction cost overruns will only be considered in the case of individual borrower accounts. (If additional funds are needed to cover cost overruns for any other type of borrower entity, consideration should be given to the admission of new partners, sale of stock, etc., under the provisions of §1965.63 of this subpart to continue ownership of the project.)

(5) When the State Director determines that a hardship is present and