

## § 1951.227

Public Law 103-354 465-1. Partial release of real estate security may be made by use of Form FmHA or its successor agency under Public Law 103-354 460-1 or other form approved by OGC.

(3) FmHA or its successor agency under Public Law 103-354 liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability.* (1) When an FmHA or its successor agency under Public Law 103-354 debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA or its successor agency under Public Law 103-354 1965-8.

(2) When sale proceeds are not sufficient to pay the FmHA or its successor agency under Public Law 103-354 debt in full, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103-354 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

\_\_\_\_\_ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the

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borrower be released from liability upon the completion of the sale.

EFFECTIVE DATE NOTE: At 69 FR 70884, Dec. 8, 2004, §1951.226 was amended in paragraph (b)(4)(ii) by revising the word "below" to read "of this subpart", effective Jan. 7, 2005.

### § 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA or its successor agency under Public Law 103-354 if the debt instrument provides that FmHA or its successor agency under Public Law 103-354 may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office).

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36591, Aug. 14, 1992]

### §§ 1951.228-1951.229 [Reserved]

### § 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA or its successor agency under Public Law 103-354 policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA or its successor agency under Public Law 103-354's security position or the FmHA or its successor agency under Public Law 103-354 program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA or its successor agency under Public Law 103-354 is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA or its successor agency under Public Law 103-354 debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA or its successor agency under Public Law 103-354 concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA or its successor agency under Public Law 103-354 400-4 to continue nondiscrimination covenants and provide to FmHA or its successor agency under Public Law 103-354 a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in §1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full account of the FmHA or its successor agency under Public Law 103-354 debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA or its successor agency under Public Law 103-354 debt will be paid.

(9) Transferees must have the ability to pay the FmHA or its successor agency under Public Law 103-354 debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balanced sheet using Form FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet," and budget and cash flow information using Form FmHA or its successor agency under Public Law 103-354 442-2, or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased 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 assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with §1951.220(i) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgment, or similar claims of other parties against the FmHA or its successor agency under Public Law 103-354 security being transferred unless the transferee is willing to accept such claims and the FmHA or its successor agency under Public Law 103-354 approval official determines that they will not prevent the transferee from repaying the FmHA or its successor agency under Public Law 103-354 debt, meeting all operating and maintenance costs, and maintaining required reserves. The

written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA or its successor agency under Public Law 103–354 loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in §1951.230(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part with FmHA or its successor agency under Public Law 103–354 grant funds; and

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years.

(c) *Eligible applicants.* Except as noted in §1951.230(b) of this subpart, the State Director is authorized to approve transfers of security property to and assumptions of FmHA or its successor agency under Public Law 103–354 debts by transferees who would be eligible for financial assistance under the loan program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisfied.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA or its successor agency under Public Law 103–354 1951–15, "Community Programs Assumption Agreement," will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. Interest will accrue at the rate currently reflected in Finance Office records.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Director and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate currently reflected in Finance Office records. Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be combined when the security is the same, new terms are being provided, a new debt instrument will be issued, and the loans have the same interest rate and are for the same purpose. If applicable, §1942.19(h)(11) will govern the preparation of any new debt instruments required.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any development funds remaining in a supervised bank account which are not to be refunded to FmHA or its successor agency under Public Law 103–354 will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in §1951.230(b) of this subpart, the State Director is authorized to approve transfer and assumptions to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. However, the State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in §1951.230(b). Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA or its successor agency under Public Law 103–354 from a transfer to

an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providing a source of easy credit for purchasers.

(1) Ineligible applicants must pay a one-time nonrefundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by non-FmHA or its successor agency under Public Law 103-354 personnel will be handled in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2024-A (available in any FmHA or its successor agency under Public Law 103-354 office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees on Form FmHA or its successor agency under Public Law 103-354 451-2, "Schedule of Remittances," and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA or its successor agency under Public Law 103-354 and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified for the note in current Finance Office records or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as an NP loan and serviced in accordance with § 1951.216 of this subpart.

(5) Form FmHA or its successor agency under Public Law 103-354 465-5, "Transfer of Real Estate Security,"

will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability.* Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability by use of Form FmHA or its successor agency under Public Law 103-354 1965-8.

(2) If less than the full amount of the debt is assumed, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103-354 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the statement set forth in § 1951.226(d)(2)(ii) of this subpart.

(f) *Processing.* Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA or its successor agency under Public Law 103-354 Instruction 2033-A (available in any FmHA or its successor agency under Public Law 103-354 office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA or its successor agency under Public Law 103-354 office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will

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be issued, and the transferee will be required to execute Form FmHA or its successor agency under Public Law 103-354 442-46, "Letter of Intent to Meet Conditions," prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA or its successor agency under Public Law 103-354 1951-15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA or its successor agency under Public Law 103-354 and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA or its successor agency under Public Law 103-354 1951-15 or other appropriate assumption agreement is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA or its successor agency under Public Law 103-354 1951-15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA or its successor agency under Public Law 103-354 1965-8.

(8) If an FmHA or its successor agency under Public Law 103-354 grant was made in conjunction with the loan being transferred, the transferee must agree in writing to assume all rights and obligations of the original grantee. See § 1951.215 for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA or its successor agency under Public Law 103-354 debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) *Rates and terms.* (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA or its successor agency under Public Law 103-354 1951-15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA or its successor agency under Public Law 103-354. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

(15) The District Director must review Form FmHA or its successor agency under Public Law 103-354 1910-11, "Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts," with the applicant, and the form must be signed by the applicant and included in the file.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36590, Aug. 14, 1992; 66 FR 1569, Jan. 9, 2001]

EFFECTIVE DATE NOTE: At 69 FR 70884, Dec. 8, 2004, § 1951.230 was amended in paragraph (f)(2) by revising the words "Form FmHA or its successor agency under Public Law 103-354 442-46" to read "an Agency approved form", effective Jan. 7, 2005.