

§ 1951.462

or prospective value or when enforcement would be ineffectual or uneconomical. Judgment liens or statutory redemption rights may be released only with prior consent of OGC.

§ 1951.462 Deceased borrower.

When an NP borrower dies, FmHA or its successor agency under Public Law 103-354 will determine whether or not arrangements can be effected for continuation of the loan under one of the provisions of this section. If not, the loan may be liquidated according to § 1951.468 of this subpart. The servicing actions and the circumstances under which they may be considered are outlined in paragraphs (a) through (d) of this section.

(a) *Continue with jointly liable borrower.* If a jointly liable borrower will repay the loan and fulfill other obligations of the loan, FmHA or its successor agency under Public Law 103-354 will take no action to liquidate the loan.

(b) *Assumption by spouse not liable for the FmHA or its successor agency under Public Law 103-354 debt.* The spouse of a deceased borrower who is not liable for the FmHA or its successor agency under Public Law 103-354 debt and who wishes to assume the debt may do so in accordance with § 1951.463(d)(1) of this subpart.

(c) *Continue with joint tenant, tenant by the entirety, or other person.* When a joint tenant, tenant by the entirety, or other person who inherits title to (or an interest in) the security property, on which the principal residence is located, by devise, descent, or operation of law upon the death of a borrower makes payments as scheduled in the promissory note (or assumption agreement), FmHA or its successor agency under Public Law 103-354 may not take action to liquidate the loan as long as the property is adequately maintained, real estate taxes and assessments are paid when due, and the dwelling is not known to be uninsured (if funds for taxes and insurance are being escrowed, the escrow is a part of the scheduled payments). The loan may be assumed in accordance with § 1951.463(d) of this subpart; however, assumption of the indebtedness is not required. Continuation with a joint tenant, tenant

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by the entirety, or other person under the provisions of this paragraph applies only to the transfer of title resulting from death of the borrower; it does not apply to any subsequent transfer of title by the inheritor(s) except by devise, descent, or operation of law upon the death of the inheritors or sale of interests among inheritors to consolidate title. Any other subsequent transfer of title will be treated as a sale and is subject to the requirements of § 1951.463 of this subpart.

(d) *Assumption by a person, other than the spouse, who is not liable for the FmHA or its successor agency under Public Law 103-354 loan.* A person other than the deceased borrower's spouse who wishes to assume the loan for the benefit of persons who were dependent on the deceased borrower at the time of death, without receiving title to the property, may do so in accordance with § 1951.463(d)(1) of this subpart provided:

(1) The residence will continue to be occupied by one or more persons who were dependent on the borrower at the time of death; and

(2) There is reasonable prospect for orderly repayment of the loan and other obligations of the loan will be met.

§ 1951.463 Transfer of security and assumption of indebtedness.

When a borrower proposes to sell security property, assumption of the indebtedness may be approved on program or NP terms, as applicable, subject to the provisions of paragraphs (c) and (d) of this section. Assumptions under paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section only are authorized on existing terms. When security property is sold (or title is otherwise conveyed), whether by full conveyance or by land contract, contract-for-deed, or other similar instrument, and the FmHA or its successor agency under Public Law 103-354 debt is not assumed by the purchaser (new owner) or paid in full, the conveyance will not be approved, except as provided in paragraphs (b)(2) and (b)(5) of this section or § 1951.462 of this subpart. If the conveyance is not approved the loan must be liquidated unless FmHA or its successor agency under Public Law 103-354

determines it is not in the Government's best interest. If FmHA or its successor agency under Public Law 103-354 decides to continue with the loan, the account will be serviced in the borrower's name and the borrower will remain liable for the loan under the terms of the security instrument.

(a) [Reserved]

(b) *General.* The following policies apply to all transfers and assumptions under this subpart:

(1) *Amount of assumption.* Except for transfers covered in paragraphs (b)(2), (b)(3), (b)(4), (b)(5) and (d) of this section, the transferee will assume the lesser of the indebtedness, or current market value as determined by FmHA or its successor agency under Public Law 103-354, less any prior liens and the downpayment.

(2) *Conveyance of security property by borrower to spouse or child.* When a borrower conveys security property to his/her spouse or children, assumption of the indebtedness is not required and FmHA or its successor agency under Public Law 103-354 may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met. In the event the transferee(s) wishes to assume the indebtedness, it may be assumed on the terms outlined in paragraph (d)(1) of this section as applicable to the circumstances.

(3) *Withdrawal of jointly liable borrower.* When a stockholder/member/partner/joint operator of an entity who is personally liable on the note withdraws from the entity or dies, and all of the remaining individuals are not personally liable on the note(s), the loan must be assumed by all remaining parties.

(4) *Addition of new transferee(s).* When new stockholders/members/partners/joint operators enter an entity, assumption of the indebtedness is required, however, the indebtedness may be assumed on existing terms. A downpayment based on the unpaid balance of the loan is required when the assumption is closed.

(5) *Conveyance of security property into an inter vivos trust.* When the borrower conveys security property into an inter vivos trust, whereby the borrower does not transfer rights of occupancy in the

property, FmHA or its successor agency under Public Law 103-354 may not take action to liquidate the loan as long as payments are made as scheduled and other obligations of the loan are met.

(c) *Program assumption.* A NP loan may be assumed by an eligible program applicant if the property meets the eligibility requirements for a currently authorized program (SFH, Farm Ownership (FO), etc.). In such cases, the assumption will be at the interest rate and up to the maximum term in effect for the type loan involved at the time the assumption is approved. After assumption on program terms, the loan will be reclassified as Rural Housing (RH), FO, etc., as applicable.

(d) *NP assumption.* The rates and terms for an NP assumption will be as provided in §1951.455 of this subpart. A loan may be assumed on existing terms only in the situations outlined in paragraphs (b)(2), (b)(3), (b)(4), (b)(5), (d)(1), (d)(2), and (d)(3) of this section. An individual not liable for the loan who acquires title to or an interest in the security by means of one of the situations mentioned may assume the indebtedness on existing terms or current terms if more favorable, in which case a downpayment based on the unpaid balance would be required. The interest rate, final due date, payment date, and account status (current, delinquent, ahead of schedule) will not be changed by virtue of an assumption on existing terms, after assumption compliance with loan conditions is required. If a same terms assumption is consummated and the account is delinquent, it may be reamortized in accordance with applicable program regulations. Situations where these terms are authorized are:

(1) An individual who acquires title to or an interest in the security property by virtue of death, divorce, or deed from a spouse or parent but is not liable for the debt and who wishes to assume the loan may do so. Any subsequent transfer of title, except between inheritors to consolidate title, will be treated as a sale and is not covered by these provisions. Individuals in this category are:

(i) A deceased borrower's surviving spouse.

- (ii) A divorced borrower's spouse.
- (iii) A joint tenant with right of survivorship or relative of a deceased borrower.
- (2) The spouse or child of a living borrower to whom title to the security property has been conveyed by spouse or parent.
- (3) A person other than the deceased borrower's spouse who wishes to continue with the loan under conditions outlined in §1951.462 (c) or (d) of this subpart may do so.
- (e) [Reserved]
- (f) *Title clearance and loan closing.* Title clearance and closing will be the same as for any program loan of the same type.
- (g) *Release from liability.* Release from liability of NP borrowers is not authorized.

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§§ 1951.464–1951.467 [Reserved]

§ 1951.468 **Liquidation.**

When it is determined an NP borrower cannot or will not successfully repay the loan, FmHA or its successor agency under Public Law 103–354 will attempt to have the borrower liquidate voluntarily.

(a) *Voluntary.* If an NP borrower in default indicates a willingness to voluntarily liquidate, other liquidation actions by FmHA or its successor agency under Public Law 103–354 may be delayed for a reasonable period, usually not to exceed 120 days for real estate, if the borrower is earnestly seeking other financing, or has the security property listed or offered for sale and it is being actively marketed at a reasonable price.

(b) *Foreclosure.* If an NP borrower in default (monetary or nonmonetary) does not cure the default and is not willing or able to voluntarily liquidate, the servicing official will refer the case to the next level supervisor with a recommendation for further action. If foreclosure is approved, the account will be accelerated. NP borrowers do not have appeal rights under subpart B of part 1900 of this chapter; however, the NP borrower may request a review of the decision to foreclose by the next level supervisor to consider evidence

that the loan is not in default. If the borrower fails to satisfy the account during the period specified in the demand letter, FmHA or its successor agency under Public Law 103–354 will proceed with foreclosure without further notice or extension of time.

(c) *Conveyance to FmHA or its successor agency under Public Law 103–354.* FmHA or its successor agency under Public Law 103–354 does not solicit or encourage conveyance of NP security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt has been accelerated and when it is in the Government's best interest. Release of the borrower from liability is not authorized. Upon receipt of an offer to convey, FmHA or its successor agency under Public Law 103–354 will remind the borrower of provisions for voluntary liquidation under paragraph (a) of this section. The borrower will also be informed of the consequences of a conveyance by deed in lieu of foreclosure as follows:

(1) All costs related to the conveyance which FmHA or its successor agency under Public Law 103–354 pays will be added to the debt;

(2) A credit equal to the market value of the property, as determined by FmHA or its successor agency under Public Law 103–354, less prior liens, will be applied to the debt; and

(3) If the credit does not satisfy the debt, the debtor remains liable for the payment of the account balance and the account will be debt settled.

(d) *Consent to sale of real estate security when the FmHA or its successor agency under Public Law 103–354 debt and authorized selling expenses exceed market value.* If an NP borrower proposes to sell real estate security for an amount which will be insufficient to pay the FmHA or its successor agency under Public Law 103–354 debt, prior lien(s) if any, and sale expenses authorized by FmHA or its successor agency under Public Law 103–354, an appraisal will be completed and FmHA or its successor agency under Public Law 103–354 may consent to the sale if the proposed sale price is not less than the market value. No commission will be allowed or paid under this paragraph when the sale is to the broker, broker's salesperson(s),