

§ 1955.129 Business brokers.

The services of business brokers or business opportunity brokers may be authorized by the appropriate Assistant Administrator in lieu of or in addition to real estate brokers for the sale of businesses as a whole, including goodwill and chattel, when:

(a) The primary use of the structure included in the sale is other than residential;

(b) The business broker is duly licensed by the respective state; and

(c) The primary function of the business is other than farming or ranching.

§ 1955.130 Real estate brokers.

Contracting authority for the use of real estate brokers is prescribed in Exhibit D of 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). Brokers who are managing custodial or inventory property may also participate in sales activities under the same conditions offered other brokers. Brokers must be properly licensed in the State in which they do business.

(a) *Type of listings.* The State Director may authorize use of exclusive listings during any calendar year. Since the Agency receives many more marketing services for its commission dollar and saves time listing the property with only one broker, it is strongly recommended that all County Offices be authorized the use of exclusive brokers.

(1) *Exclusive broker contract.* An exclusive broker contract provides for the selection of one broker by competitive negotiation who will be the only authorized broker for the FmHA or its successor agency under Public Law 103-354 office awarding the contract within a defined area and for specific property or type of property. Criteria will be specified in the solicitation together with a numerical weighting system to be used (usually 1-100). Responses will be calculated on the basis of the criteria such as personal qualifications, membership in Multiple Listing Service (MLS), previous experience with FmHA or its successor agency under Public Law 103-354 sales, advertising plans, proposed innovative promotion

methods, and financial capability. The responsibilities of the broker under an exclusive broker contract exceed those of the open listing agreement and therefore, an exclusive broker contract is the preferred method of listing properties.

(2) *Open listing.* Open listing agreements provide for any licensed real estate broker to provide sales services for any property listed under the terms and conditions of Form FmHA or its successor agency under Public Law 103-354 1955-42, "Open Real Property Master Listing Agreement." If this method is used, a newspaper advertisement will be published at least once yearly, or a notice sent to all real estate brokers in the counties served by the FmHA or its successor agency under Public Law 103-354 office, informing brokers that sales services are being requested. The advertising will be substantially similar to the example given in Exhibit B of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office). An open listing agreement may be executed at any time during the year, but must be effective prior to the broker showing the property. When this method is used, the FmHA or its successor agency under Public Law 103-354 office is responsible for ensuring that adequate advertising is performed to effectively market the property.

(b) *Listing notices.* Forms FmHA or its successor agency under Public Law 103-354 1955-40 or FmHA or its successor agency under Public Law 103-354 1955-43, as appropriate, will be used to provide brokers with notice of initial listing, withdrawal, price change, terms change, relisting, sale cancellation, restrictions on sale, etc.

(c) *Priority of offers.* All offers received during the same business day will be considered as having been received at the same time. The successful offer from among equally acceptable offers within each category will be determined by lot by FmHA or its successor agency under Public Law 103-354. Priority rules for specific categories of property are:

(1) *Program SFH.* See § 1955.114(a) of this subpart.

(2) *Program MFH.* Offers will be considered from program applicants only.

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(3) *NP SFH*. See §1955.115(a) of this subpart.

(4) *NP MFH*. See §1955.115(b) of this subpart.

(5) *Suitable and surplus FSA CONACT*. See §1955.107 of this subpart.

(6) *Suitable and Surplus Non-FSA CONACT*. See §1955.108 of this subpart.

(d) *Price*. No offer for less than the listed price will be accepted during the period of regular sale.

(e) *Earnest money*. The broker will collect earnest money in the amount specified in paragraph (e)(1) of this section when a sale contract is executed. The earnest money will be retained by the broker until contract closing, withdrawal, cancellation, or rejection by FmHA or its successor agency under Public Law 103-354. When a contract is cancelled because FmHA or its successor agency under Public Law 103-354 rejects the offeror's application for credit, the earnest money will be returned to the offeror. When a contract closes, the broker will make the earnest money available to be used toward closing costs, or in the case of a cash sale it may be returned to the purchaser. For MFH sales to profit or limited profit buyers, any excess earnest money deposit will be credited to the purchaser's initial investment.

(1) *Amount*. The amount of earnest money collected will be:

(i) For single family properties or MFH projects of 2 to 5 units, \$50.

(ii) For all property other than that covered in paragraph (e)(1)(i) of this section, the *greater* of the estimated closing costs shown on the notice of listing (Form FmHA or its successor agency under Public Law 103-354 1955-40) or ½ of 1 percent of the purchase price.

(2) *Offeror default*. When a contract is cancelled due to offeror default, the earnest money will be delivered to and retained by the agency as full liquidated damages.

(f) *Commission*—(1) *Amount*—(i) *Exclusive broker contract*. FmHA or its successor agency under Public Law 103-354 may not set the commission rate in an exclusive broker solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any broker who submits an offer with a commission rate lower

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than the typical rate for such services in the area must provide documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy.

(ii) *Open listing agreement*. A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses*. The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property. The State Director may authorize use of short-term (not to exceed three months) special effort sales bonuses on a group, county, district or state-wide basis, if it appears necessary to facilitate the sale of nonprogram property.

(3) *Payment of commission*. Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving FmHA or its successor agency under Public Law 103-354 credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving FmHA or its successor agency under Public Law 103-354 credit, one-half the respective commission will be paid to the exclusive broker. Commissions will

be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103-354 official by completing Form AD-838 and processing Form FmHA or its successor agency under Public Law 103-354 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with FmHA or its successor agency under Public Law 103-354 shall certify to nondiscrimination practices as provided in Form FmHA or its successor agency under Public Law 103-354 1955-42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form FmHA or its successor agency under Public Law 103-354 1955-45.

[53 FR 27836, July 25, 1988, as amended at 55 FR 3943, Feb. 6, 1990; 62 FR 44401, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in § 1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to 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).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* FmHA or its successor agency under Public Law 103-354 may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold

properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate FmHA or its successor agency under Public Law 103-354 official completing Form AD-838 and processing Form FmHA or its successor agency under Public Law 103-354 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

GENERAL

§ 1955.132 Pilot projects.

FmHA or its successor agency under Public Law 103-354 may conduct pilot projects to test policies and procedures for the management and disposition of inventory property which deviate from the provisions of this subpart, but are not inconsistent with the provisions of the authorizing statute or other applicable Acts. A pilot project may be conducted by FmHA or its successor agency under Public Law 103-354 employees or by contract with individuals, organizations or other entities. Prior to initiation of a pilot project, FmHA or its successor agency under Public Law 103-354 will publish notice in the FEDERAL REGISTER of its nature, scope, and duration.

[55 FR 3943, Feb. 6, 1990]

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if FmHA or its successor