

§ 1965.12

354 learns that a junior lienholder is foreclosing, the County Supervisor will send the borrower attachments 1 and 3 and 4 of exhibit A of subpart S of part 1951 of this chapter and exhibit B of this subpart. If the borrower contacts FmHA or its successor agency under Public Law 103-354 and wants to apply for servicing relief, the request will be processed in accordance with subpart S of part 1951 of this chapter. If the junior lienholder forecloses and the property is sold subject to the FmHA or its successor agency under Public Law 103-354 mortgage, following the resolution of any appeal in favor of FmHA or its successor agency under Public Law 103-354, the borrower's account will be accelerated and liquidated in accordance with the applicable portion of §1955.15 of subpart A of part 1955 of this chapter.

(d) *Divorce actions.* See §1965.27 (b)(5)(iii) of this subpart for directions on servicing security after divorce. A subsequent loan made as a result of a divorce action will be handled in accordance with §1965.27(b)(13) of this subpart.

[51 FR 4140, Feb. 3, 1986, as amended at 53 FR 35794, Sept. 14, 1988; 56 FR 15829 Apr. 18, 1991; 57 FR 20741, May 15, 1992; 57 FR 36592, Aug. 14, 1992; 58 FR 38928, July 21, 1993]

§ 1965.12 Subordination of an Agency mortgage.

(a) *Conditions.* A subordination may be granted if all of the following conditions are met:

(1) The subordination is to refinance debt or for an authorized direct loan purpose;

(2) The Agency debt cannot be refinanced without a subordination;

(3) The borrower can document the ability to repay the total amount due under subordination and pay all other debt payments scheduled for the subject operating cycle;

(4) The loan funds will not be used in such a way that will contribute to erosion of highly erodible land or conversion of wetlands for the production of an agricultural commodity according to subpart G of part 1940 of this chapter;

(5) Any planned development is performed in a manner directed by the creditor and agreed to by the Agency

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and reasonably attains the objectives of subpart A of part 1924 of this chapter;

(6) Funds to be used to develop or to acquire land will be deposited in a supervised bank account that is subject to signature by the Agency and the borrower, or in a similar arrangement, to ensure that funds will be spent for the planned purposes;

(7) In cases of land purchase or exchange of property, the Agency will obtain a valid mortgage on the acquired land. Title clearance and loan closing will be required as for an initial or subsequent FO loan, as appropriate;

(8) The borrower has not been convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance under Federal or state law. "Borrower" for purposes of this provision, specifically includes an individual or entity borrower and any member stockholder, partner, or joint operator, of an entity borrower and any member, stockholder, partner, or joint operator of an entity borrower. "Controlled substance" is defined at 21 CFR part 1308. The borrower will be ineligible for a subordination for the crop year in which the conviction occurred and the four succeeding crop years. An applicant must attest on the Agency application form that it and its members, if an entity, have not been convicted of such a crime;

(9) The Agency loan is still adequately secured after the subordination, or the value of the loan security will be increased by at least the amount of the advances to be made under the terms of the subordination;

(10) The subordination is limited to a specific amount and the loan to be secured by the subordination is closed within a reasonable time; and

(11) Only one subordination to one creditor may be outstanding at any one time in connection with the same security.

(b) *Subordination on real estate owned by an entity member.* Notwithstanding the provisions of paragraph (a) of this section, when the borrower is an entity and the Agency has taken real estate as additional security on property owned by an entity member, a subordination for any authorized Farm Loan

Programs loan purpose may be approved when it is needed for the entity member to finance a separate operation. The subordination, however, may be approved only if it does not cause the unpaid principal and accrued interest balance of the Agency loan to exceed the value of the loan security or otherwise adversely affect the security.

(c) *Request for subordination.* A borrower must complete an application provided by the Agency to receive consideration for a subordination.

(d) *Notice of foreclosure.* The lienholder requesting the subordination will agree to give notice of foreclosure as required by the Agency.

(e) *Appraisal.* The Agency will prepare a current appraisal report in accordance with §761.7 of this title when property is to be purchased or exchanged, or when the existing appraisal report is more than 1 year old or is inadequate to make the determination required in this section. The Agency may use the appraisal report prepared for another lender if it complies with the requirements of §761.7 of this title.

(f) *Reamortizing existing Agency debts.* The Agency may consent to a reamortization of an existing Agency debt when a subordination is granted to the debt of another lender. The reamortization will be allowed only when the borrower cannot reasonably be expected to meet all currently scheduled installments when due and the conditions of subpart S of part 1951 of this chapter are met.

(g) *Subordination to make a guaranteed loan.* In addition to the requirements of this section, subordinations of liens on real estate security to make a guaranteed loan will be approved in accordance with §1980.108 of this chapter.

[63 FR 20297, Apr. 24, 1998, as amended at 64 FR 62569, Nov. 17, 1999]

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

See subpart S of part 1951 of this chapter when a combination of NP, ST and other FP loans are involved. If a FP loan is being deferred and reamortized as an ST loan, partial releases are authorized as provided in Subpart S of Part 1951 of this chapter. However,

there is no authority for FmHA or its successor agency under Public Law 103-354 employees to consent to partial release or sale, exchange or other disposition of a portion of the security for an existing ST loan.

(a) *Provisions of FmHA or its successor agency under Public Law 103-354 mortgages.* In all FmHA or its successor agency under Public Law 103-354 mortgages except SFH loan mortgages prepared before October 1, 1950, and a few OL, EM, Special Livestock (SL), and Water Facilities (WF) loan mortgages, the borrower has agreed not to sell, transfer, assign, mortgage, or otherwise encumber the security or any portion of or interest in it without the prior written consent of the mortgagee. Furthermore, in the case of the few SFH, OL, EM, SL, and WF loan mortgages not requiring FmHA or its successor agency under Public Law 103-354 consent, any property, or any part of it or interest in it, which is subject to the FmHA or its successor agency under Public Law 103-354 mortgage and which is disposed of by the borrower without consent remains subject to the mortgage lien. In all FmHA or its successor agency under Public Law 103-354 mortgages the borrower expressly agrees not to engage, without prior consent, in certain specified transactions, including the cutting or removal of timber, or mining or removal of gravel, oil, gas, coal, or other minerals, except small amounts used by the borrower for ordinary domestic purposes. The sale of timber (other than harvests for thinning purposes approved by FmHA or its successor agency under Public Law 103-354 on a farm plan), mining products, removal of gravel, oil, gas, coal, or other minerals by unit or lump sum payments will be considered as disposition of a portion of the security, *except:* For Farmer Program loans approved after December 23, 1985, the sale of such products, other than timber, will be considered a disposition of a portion of the security *only* if the rights to the products were specifically included as a part of the appraisal value of the real estate securing the loan; if the rights were not included in the appraisal, then FmHA or its successor agency under Public Law 103-354 has no lien on the rights to oil, gas or