

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

other minerals located under the real estate. Any payment or other compensation the borrower may receive for damages to the surface of the collateral real estate resulting from exploration for or recovery of minerals will be assigned to FmHA or its successor agency under Public Law 103-354 and will be used to repair the damage or used as authorized in § 1965.13(f) of this subpart. This section explains how and under what circumstances FmHA or its successor agency under Public Law 103-354 will grant partial releases, and give its consent to certain transactions affecting the security. Subordinations, transfers, consents to junior liens, leases and severance agreements are discussed individually in other sections of this subpart. Releases granted in connection with a final payment on real estate will be handled in accordance with subpart D of part 1951 of this chapter.

(b) *Conditions of FmHA or its successor agency under Public Law 103-354 consent.* A State Supplement will be developed, with guidance of OGC, and issued to provide guidance for handling of easements or rights-of-way in connection with the development, extension, construction or modification of community based programs, such as rural water districts, drainage, and irrigation districts, without requiring monetary consideration or detailed appraisals. Otherwise, FmHA or its successor agency under Public Law 103-354 may consent to certain transactions affecting the security (for example, a sale or an exchange of security or granting a right-of-way across security) and/or grant a partial release if:

(1) The transaction will further the objectives for which the FmHA or its successor agency under Public Law 103-354 loan or loans were made;

(2) The proposed use of the funds including the payment of reasonable costs and expenses incident to the transaction will improve the borrower's ability to repay the FmHA or its successor agency under Public Law 103-354 loan(s) or is necessary to place the borrower's operation on a sound basis;

(3) The consideration is adequate for the security being disposed of or the

rights granted (see paragraph (c) of this section);

(4) Orderly repayment of the FmHA or its successor agency under Public Law 103-354 indebtedness will not be impaired (does not apply in condemnation cases after final judgment or award which is not appealed);

(5) The transaction will not interfere with successful operation of any farming or other enterprise providing the borrower with repayment ability (does not apply in condemnation cases after final judgment or award which is not appealed);

(6) The market value of the remaining security is adequate to secure the unpaid balance of the FmHA or its successor agency under Public Law 103-354 debts, or if the market value of the security before the transaction was inadequate to fully secure the FmHA or its successor agency under Public Law 103-354 debts, the FmHA or its successor agency under Public Law 103-354's security interest is not adversely affected;

(7) The requirements of § 1965.6 of this subpart are met; and

(8) The borrower cannot graduate to other credit.

(c) *Exchange of property.* When an exchange of property serving as security for an FmHA or its successor agency under Public Law 103-354 loan results in a balance owing to the FmHA or its successor agency under Public Law 103-354 borrower, the provisions of this section applicable to a sale of a portion of the security will apply as to disposition of proceeds. When property is exchanged, the property acquired by the FmHA or its successor agency under Public Law 103-354 borrower must meet requirements of the program objectives, purposes and limitations outlined in this subpart relating to the type of loan involved as well as respective requirements for appraisal, title clearance and security. Requests for exchange of property which cannot be approved under this section may be submitted to the National Office for consideration, provided the request meets conditions in § 1965.35 of this subpart.

(d) *Appraisals.* A new appraisal report for the security to be transferred or released will be obtained in accordance

with §761.7 of this title as necessary to protect the financial interests of the Government or when the transaction involves more than \$25,000. A new appraisal report for the security to be retained will be obtained in accordance with that section as necessary to protect the financial interests of the Government. Appraisal reports under this section may show the present market value of the property being transferred or released and the property being retained on a single appraisal report or on separate appraisal reports. The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

(1) *Stationary units.* If timber or minerals, including sand, gravel, and stone which appear to be worth more than \$2,000 are to be sold on the basis of the timber stand or the mineral deposit rather than the units to be removed, the borrower will be encouraged to obtain the assistance of a qualified technician other than an FmHA or its successor agency under Public Law 103-354 employee to provide advice on the quality or value of the timber or minerals, and the manner in which they should be sold. Generally, assistance can be obtained from State or Federal employees who are located in the area, such as U.S. Department of Agriculture Forest Service employees.

(2) *Units removed.* When timber or minerals including sand, gravel, or stone, are to be sold on the basis of the units to be removed, or when an easement or a right-of-way is to be sold or granted, the employee authorized to make the appraisal may insert the date, and initial a notation on the existing appraisal report instead of making a new appraisal report. The notation should show (i) the unit value of timber or minerals, or the value of the easement or right-of-way, based on the consideration being paid for similar items in the area; and (ii) the manner in which the remaining property will be affected. If the market value of the remaining property is significantly decreased, a market value appraisal of the remaining property usually will be required.

(e) *Authority of the County Supervisor and District Director—(1) Forest products.* County Supervisors and District Directors can approve most applications for consent or release involving the harvest or sale of forest products. In the case of 3 percent loans for forestry purposes, applications for consent or release will be forwarded to the State Director for approval if:

(i) The harvest or sale is not in accordance with strict provisions of the initially approval forestry plan,

(ii) Future repayments on the 3 percent advance are scheduled on any basis other than equal annual installments,

(iii) There is a lien on the forest land prior to the lien of the FmHA or its successor agency under Public Law 103-354, or

(iv) There is a delinquency on any FmHA or its successor agency under Public Law 103-354 real estate loan.

(2) *Terms of a sale.* County Supervisors and District Directors may approve sales made on the following terms.

(i) Sale of a portion of the security for its market value on the following terms:

(A) For SFH loans, refer to §1965.110 of subpart C of part 1965 of this chapter.

(B) For all other loans, not less than 10 percent (of the purchase price) down and payments not to exceed ten annual installments of principal plus interest at not less than the current rate being charged on regular FO loans plus 1 percent or the rate on the borrower's note(s), whichever is greater. Payments may be in equal or unequal installments with a balloon final installment. For farmer program loans approved after December 23, 1985, the sale of mining products gravel, oil, gas, coal, or other minerals will be considered a sale of security *only* if the rights to such products were specifically included as a part of the appraised 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 such products located under the real estate.

(ii) In each case it must be determined that:

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(A) The government's security rights, including the right to foreclose on either the portion being sold or retained, are not impaired.

(B) The down payment and any subsequent payments are applied to the FmHA or its successor agency under Public Law 103-354 debt(s), prior lien(s), or otherwise used as authorized in this section under paragraph (f) of this section, and

(C) If applicable, the requirements of subpart G of part 1940 of this chapter must be met.

(iii) In each case the following conditions must be met:

(A) Any amount to be paid FmHA or its successor agency under Public Law 103-354 from the down payment and subsequent payments must be assigned to FmHA or its successor agency under Public Law 103-354.

(B) The property sold will not be released prior to either full payment of the borrower's account or receipt of full amount of sale proceeds with proper application or release of the proceeds, and

(C) The borrower must agree in writing that the sale proceeds will not affect the borrower's primary and continued obligation for making payments under terms of the note or any other agreements approved by FmHA or its successor agency under Public Law 103-354.

(f) *Use of proceeds.* County Supervisors or District Directors may approve transactions if the proceeds will be used in one of the following ways.

(1) Proceeds may be applied on liens in order of priority. Written consent of any prior or junior lienholder will be obtained by the borrower and delivered to the FmHA or its successor agency under Public Law 103-354 if any proceeds are not to be applied in accordance with lien priorities.

(2) The borrower may use a portion of any proceeds to pay customary incidental costs appropriate to the transaction and reasonable in amount which the borrower cannot arrange to pay for personal funds or cannot have the purchaser pay. The costs may, for example include real estate taxes which must be paid to consummate the transaction; cost of title examination, surveys, abstracts, title insurance, reasonable at-

torney's fees, real estate broker's commissions and judgment liens. In any State in which it is necessary to obtain the insured note from the lender to present to the recorder before a release of 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 County Supervisor will advise the borrower when requesting a partial release that the borrower must pay the cost. If the borrower is unable to pay the costs from personal funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual cost furnished by the payee.

(3) Proceeds may be used for development of land owned by the borrower or for enlargement, if development or enlargement is necessary to improve the borrower's debt-payment ability and to place the borrower's operation on a sound basis, or to otherwise further the objectives of the loan. The use of proceeds for these purposes will not conflict with the loan purposes, restrictions or requirements of the type loan(s) involved. Any proposed development work will be in accordance with subpart A of part 1924 of this chapter. Funds to be used for development or enlargement will be handled under subpart A of part 1902 of this chapter.

(4) When FmHA or its successor agency under Public Law 103-354 loans secured by a lien on real estate will be adequately secured after a transaction affecting the real estate takes place, proceeds may, with the consent of the State Director and other lienholders on the real estate, be used as follows:

(i) Applied to delinquent or unmatured FmHA or its successor agency under Public Law 103-354 loan installments when the borrower is otherwise unable to meet the installments.

(ii) For other than SFH loans, applied on debts owed creditors other than FSA Farm Credit Programs to the extent needed to establish a basis for continuation of the other creditor's account, if the following requirements are met:

(A) A feasible farm and home plan will be developed in accordance with § 1924.56 of subpart B of part 1924 of this

chapter. Voluntary debt adjustment will be utilized, as appropriate, in accordance with subpart A of part 1903 of this chapter.

(B) Proceeds will not be used to pay current crop/operating year family living and/or operating expenses, as developed in the Annual Plan in accordance with §1924.56 of subpart B of part 1924 of this chapter.

(iii) Develop land not owned by the borrower which is essential to the borrower's operation in an amount not to exceed \$10,000, provided: the improvements are needed to improve the borrower's repayment ability and the borrower has tenure arrangements which justify the use of the proceeds on the land not owned by the borrower. Development work performed will be in accordance with subpart A of part 1924 of this chapter. Funds will be handled under subpart A of part 1902 of this chapter.

(5) When liquidation action is pending in accordance with §1965.26 of this subpart, the County Supervisor or District Director is authorized to approve transactions only when all the proceeds (other than costs authorized in paragraph (f)(2) of this section) will be applied to the liens against the security in the order of their priority.

(g) *Authority of the State Director.* The State Director is authorized to approve transactions that exceed the approval authority granted in paragraph (e) of this section to the County Supervisor and District Director, or that involve an easement or right-of-way granted or conveyed without monetary compensation or for a token consideration. When approving these transactions, the State Director must determine that the requirements of paragraph (b) of this section are met.

(h) *Processing.* FmHA or its successor agency under Public Law 103-354's consent will be given by approving a completed Form FmHA or its successor agency under Public Law 103-354 465-1 if the transaction meets the conditions of paragraph (b) of this section. Also, when requested, FmHA or its successor agency under Public Law 103-354 will give a written partial release on Form FmHA or its successor agency under Public Law 103-354 460-1, "Partial Release," or other form approved by OGC.

A formal release may not be delivered for 15 days after the payment is received unless payment is made in the form of cash, money order, certified check, or check from a reputable lending agency. Releases not delivered will usually be voided 30 days after notification to the requesting party that the release is available. When an insured FO mortgage is held by the lender, the holder's consent will be obtained only if a written partial release or other written servicing document is requested by the borrower. When the approval of a transaction by the State Director is required, or when the County Supervisor or District Director desires advice in connection with approval of a transaction, the borrower's case folder, Form FmHA or its successor agency under Public Law 103-354 465-1, and any other information pertinent to the transaction will be sent to the State Office.

(i) *Liquidation.* If FmHA or its successor agency under Public Law 103-354 is unable to approve a partial sale, the partial sale cannot be used as the basis for liquidation in the following circumstances:

(1) The spouse or children of the borrower become the owner of the property.

(2) The sale results from a divorce or legal separation and the spouse of the borrower becomes the owner of the property.

(3) An *intervivos* trust becomes the owner of the property so long as the borrower is a beneficiary of the trust and there is no change in occupancy of the property.

[51 FR 4140, Feb. 3, 1986, as amended at 52 FR 26139, July 13, 1987; 53 FR 35795, Sept. 14, 1988; 56 FR 10154, Mar. 11, 1991; 57 FR 775, Jan. 9, 1992; 58 FR 44752, Aug. 25, 1993; 58 FR 52654, Oct. 12, 1993; 61 FR 35931, July 9, 1996; 64 FR 62569, Nov. 17, 1999; 66 FR 7568, Jan. 24, 2001; 69 FR 30999, June 2, 2004]

§ 1965.14 Subordination of FmHA or its successor agency under Public Law 103-354 real estate mortgages to easements to the U.S. Fish and Wildlife Service, (formerly the Bureau of Sport Fisheries and Wildlife).

Exhibit A (available in any FmHA or its successor agency under Public Law