

(9) Reamortizations will always be closed the first day of the month. Unpaid interest to the date of closing may be capitalized.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 8605, Mar. 4, 1985; 52 FR 24288, June 30, 1987; 55 FR 25081, June 20, 1990; 56 FR 25352, June 4, 1991; 56 FR 66964, Dec. 27, 1991; 58 FR 38930, July 21, 1993]

§ 1965.71 [Reserved]

§ 1965.72 Deceased borrower.

Deceased borrower cases will be handled according to the policy outlined in §1962.46 of subpart A of part 1962 of this chapter except that all references to the County Supervisor are now construed to mean the District Director. The advice of OGC will be obtained as necessary.

§ 1965.73 Bankruptcy and insolvency.

Bankruptcy and insolvency cases will be handled according to the policy outlined in §1962.47 of subpart A of part 1962 of this chapter except that all references to the County Supervisor now mean District Director. The handling of bankruptcy cases varies from state to state. Therefore, the State Director may issue State Supplements providing more specific guidance to expedite the handling of those cases. The advice of OGC will be obtained as necessary.

§ 1965.74 Divorce actions.

When individual borrowers with loans are involved in a divorce action, the District Director will review the case after the final divorce decree has been granted to determine if any action is needed for the future servicing of the account. The District Office file will be submitted to the State Director for advice if the District Director is uncertain of the servicing actions needed to protect the FmHA or its successor agency under Public Law 103-354's interest or if continuation of the loan with the remaining borrower is not authorized. No subsequent loan will be made to pay any equity as a result of a divorce action.

§ 1965.75 Abandonment.

When the District Director believes that the borrower has abandoned a project, an immediate check with the

appropriate sources (for example: tenants, management agents, assessor's office, etc.) will be made to determine if the borrower has moved and, if so, whether a forwarding address can be determined so that further servicing actions can be taken.

(a) A property is considered abandoned when any or all of the following conditions exist:

(1) The borrower cannot be located after the District Director has made diligent efforts to contact the borrower. This condition also applies to those instances where the general partner(s) of a limited partnership cannot be located and the limited partners are unknown or cannot be located.

(2) The project remains unoccupied for an extended period of time and the borrower makes no effort to maintain the security property, secure eligible occupants, and/or comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance.

(b) If the property is not being maintained and the District Director determines that the borrower has abandoned the project, the District Director will attempt to contact any prior lienholders with a request that they take control of the property and make any emergency repairs necessary. If no prior lienholder is involved or the prior lienholder cannot immediately be contacted or refuses to make the emergency repair, the District Director will immediately notify the State Director and request permission to take possession of the property pending liquidation, make emergency repairs to prevent further deterioration of the security, and to enter into a lease with the individual tenants, or a management or caretaker's agreement, on behalf of the borrower.

(c) A caretaker or management agent will normally be obtained when the borrower has abandoned the security property or has failed to maintain its operation and the State Director determines, with the advice of OGC, that the FmHA or its successor agency under Public Law 103-354 should take possession of the property to best protect the interest of the Government subject to the following:

§ 1965.76

(1) *Selection of a caretaker or management agent.* Persons or firms chosen as caretakers or management agents should have experience in operating and managing similar properties or have business background or experience which qualifies them to perform the needed services. They must be located near the property to provide day-to-day supervision or appoint a qualified local person to meet this requirement. Caretakers will normally be selected for unoccupied projects or those not suitable for occupancy. Management agents will only be selected for projects which are occupied or suitable for occupancy. Selection procedures will be in accordance with §1955.63(a) of subpart B of part 1955 of this chapter, and will be appropriately documented. (No other actions specified in subpart B of part 1955 may be implemented until such time as liquidation action has been approved in writing by the appropriate FmHA or its successor agency under Public Law 103-354 official.)

(2) *Fees.* The amount of the management agent or caretaker fee should be no more than the typical rate for similar services in the area. The amount may be based on a percentage of the income from the property or a flat fee amount. The fees will be considered a recoverable cost and charged to the borrower's account. The fees will be paid on a monthly basis 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).

(3) *Rental rates for abandoned projects.* Rental rates will normally remain the same for eligible occupants as when the project was under the control of the borrower. Rental rates may be revised with the approval of the State Director under the following conditions:

(i) The lease agreement between the borrower and tenant permits changing the rates.

(ii) A change of rates is needed to provide income sufficient to pay operational and maintenance expenses, including the caretaker's fee, and to repay the loan on schedule.

(iii) Any increase will not result in rental rates above the payment ability of eligible occupants, unless the State

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Director has given the authority to rent units to ineligible occupants.

(d) All these actions shall be fully documented in the official case file. Liquidation will immediately be instituted according to subpart A of part 1955 of this chapter.

(e) When the project is occupied but rent is not paid or collected, the eligibility of the occupants cannot be determined, and the borrower has failed to comply with the objectives of the loan within a reasonable period of time as specified by the District Director in a certified letter sent to the borrower requesting compliance, the State Director should refer the case to the Regional Attorney for guidance, including the possibility of having a receiver appointed.

[49 FR 49590, Dec. 21, 1984, as amended at 57 FR 36592, Aug. 14, 1992]

§ 1965.76 [Reserved]

§ 1965.77 Consent to sale or other disposition of security property.

(a) *General policies.* The State Director may approve requests for and consent to:

(1) Use of proceeds from the sale of a portion of or an interest in the security,

(2) Exchange of all or a part of the undeveloped security for other real estate, or

(3) Granting or conveyance of rights-of-way subject to the conditions and requirements of this section.

(b) *Processing requests.* These requests will be made on Form FmHA or its successor agency under Public Law 103-354 465-1. The District Director will forward a properly completed and executed Form FmHA or its successor agency under Public Law 103-354 465-1, the proposed deed, easement, or other form of title conveyance, and the case file to the State Director with a memorandum containing additional information, as needed, to justify the approval or disapproval of the proposed transaction.

(c) *Conditions of approval.* The State Director may grant consent provided:

(1) The orderly payment of the FmHA or its successor agency under Public Law 103-354 indebtedness will not be impaired. Except that in condemnation