

the assistance of the real estate broker.

(vi) To develop or enlarge the borrower's facility for purposes for which a loan of the same type involved could be made, if the development or enlargement is necessary to improve the borrower's debt-paying ability, place the operation on a more sound basis, or otherwise further the objectives of the FmHA or its successor agency under Public Law 103-354 loan. Any proposed development will be planned and performed according to subpart A of part 1924 of this chapter and funds to be used for development or enlargement will be handled according to subpart A of part 1902 of this chapter.

(vii) To purchase or acquire property to be used for purposes for which a loan of the same type involved is authorized, if the FmHA or its successor agency under Public Law 103-354 debt will be as well secured after the transaction as before. FmHA or its successor agency under Public Law 103-354 will obtain a lien on the acquired property, and will obtain title evidence according to subpart B of part 1927 of this chapter.

(viii) To pay any additional income tax which the borrower must pay for the year because of the capital gain or royalty tax attributable to the transactions. Funds for back taxes must be estimated and held in a supervised bank account until actual payment of the tax.

(8) FmHA or its successor agency under Public Law 103-354 liens are not released until receipt of the appropriate sales proceeds for application on the Government's claim.

(d) *Releasing security.* Security for FmHA or its successor agency under Public Law 103-354 loans addressed in this subpart will be released according to applicable program regulations and as follows:

(1) Borrowers will be held strictly accountable to the FmHA or its successor agency under Public Law 103-354 for all proceeds derived from the sale of mortgaged property which the FmHA or its successor agency under Public Law 103-354 is entitled to receive under its lien.

(2) Consent to disposition of part, or an interest in, security property as authorized in this subpart may be given

by approving a completed Form FmHA or its successor agency under Public Law 103-354 465-1 or other forms approved by OGC or prescribed in State Supplements. Upon request for consent, the District Director will forward Form FmHA or its successor agency under Public Law 103-354 465-1, the borrower's case folder, and any other pertinent information to the State Director.

(i) Chattel security may be released from a chattel mortgage by use of Form FmHA or its successor agency under Public Law 103-354 460-1, "Partial Release," or other approved form, and from a security interest under the Uniform Commercial Code by use of Form FmHA or its successor agency under Public Law 103-354 462-12, "Statements of Continuation, Partial Release, Assignment, Etc." Satisfaction or termination of chattel security instruments will be accomplished following the guidance of subpart A of part 1962 of this chapter.

(ii) Real estate security may be released by use of Form FmHA or its successor agency under Public Law 103-354 460-1 or other form approved by OGC. Satisfaction or termination of real estate security instruments when the FmHA or its successor agency under Public Law 103-354 debt has been paid in full or satisfied by debt settlement action will be accomplished with the use of Form FmHA or its successor agency under Public Law 103-354 460-4, "Satisfaction."

(iii) Any consent which would result in the FmHA or its successor agency under Public Law 103-354 loan account being paid in full will be subject to the prepayment provisions of §1965.90 of this subpart and subpart E of this part as applied to RRH, RCH, and LH loans.

[49 FR 49590, Dec. 21, 1984, as amended at 56 FR 67484, Dec. 31, 1991; 58 FR 38930, July 21, 1993]

#### § 1965.78 [Reserved]

#### § 1965.79 Subordination.

(a) *General policies.* The State Director is authorized to approve requests for subordination of LH, RRH or RCH loans according to this section, if the total debt against the security after the transaction does not exceed the

State Director's loan approval authority for the type of loan involved. Subordination by the State Director will only be considered for individual LH borrowers on farm tracts, multiple housing loans on nonfarm tracts to obtain construction financing, and in those cases where FmHA or its successor agency under Public Law 103-354 loan funds are unavailable or the funds can be provided from the private sector at competitive or less costly rates than those offered by FmHA or its successor agency under Public Law 103-354. All other subordination requests, and those exceeding the State Director's approval authority limit must be submitted to the National Office for prior authorization to approve. Each request for subordination 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 copy of the form to the State Director with a memorandum containing any needed information to justify approval or disapproval of the request.

(b) *Conditions of approval.* Subordination of the FmHA or its successor agency under Public Law 103-354 lien will only be authorized when it will enable the present borrower to permit another creditor to refinance, extend, reamortize, or increase the amount of a prior lien, or place a lien ahead of the FmHA or its successor agency under Public Law 103-354 lien. When the prior lien is being increased by an amount which exceeds normal transaction costs or a new prior lien is being placed against the security, an FmHA or its successor agency under Public Law 103-354 official authorized to make appraisals for the type of project involved will supplement the present appraisal report by inserting in the "Remarks" section information as to the market value of the security after the transaction if the appraisal is less than one year old. If the appraisal is more than one year old, a new appraisal as required by FmHA or its successor agency under Public Law 103-354 Instruction 1922-B (available in any FmHA or its successor agency under Public Law 103-354 office) must be completed. The State Director may also request an appraisal at any time deemed appro-

priate. In all cases, the following conditions must be met:

(1) The FmHA or its successor agency under Public Law 103-354 multiple housing account must be current and the borrower must be capable of providing adequate management.

(2) The transaction must further the objectives for which the FmHA or its successor agency under Public Law 103-354 loan or loans were made and FmHA or its successor agency under Public Law 103-354's debt must be adequately secured or will not be adversely affected.

(3) The proposed use of the funds 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.

(4) The borrower is unable to refinance the FmHA or its successor agency under Public Law 103-354 loan on terms which can reasonably be expected to be met yet still meet the original intent of the program.

(5) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as all other debts.

(6) The amount of the indebtedness against the security property, including the amount of the subordination, will not exceed its present market value.

(7) When an increase in the amount of the prior lien or a new prior lien is involved, subordination will be granted only when the funds will be used for the same purposes for which the loan of the same type is authorized; except, all LH loans on a farm tract may be subordinated for essential farm improvements and any other purpose for which an FmHA or its successor agency under Public Law 103-354 Farm Ownership loan can be made as described in §1943.16 of subpart A of part 1943 of this chapter. LH loans will not be subordinated to provide operating capital or purchase chattels. If the LH loan is secured only by the LH units and the project site, the LH loan will only be subordinated for purposes for which an LH loan may be made.

(8) Any proposed development will be planned and performed according to subpart A of part 1924 of this chapter or

## § 1965.80

in a manner directed by the other creditor which reasonably attains the objectives of subpart A of part 1924 of this chapter and is concurred with by the State Director.

(9) Funds to be used for development or enlargement of farm operations will be handled as prescribed for loan funds in subpart A of part 1902 of this chapter except that, if the creditor will not permit the use of a supervised bank account, arrangements should be made to assure that funds will be spent for planned purposes and should be approved by the District Director before being released.

(10) In case of land purchase, FmHA or its successor agency under Public Law 103-354 will obtain the best lien obtainable on the land purchased.

(11) Subordinations need not cover the entire site. If a subordination is requested to permit an interim lender to advance construction funds, only the portion of the site scheduled for construction will be subordinated. If the entire farm tract has been taken as security for a LH loan, subordination of the lien on all property except the minimum adequate site, including necessary ingress and egress, on which the LH units are situated, may be authorized for any purpose consistent with the LH program regulations and paragraph (b)(7) of this subpart. For RHS loans, the prorated portion of the lien for the individual lots may be subordinated to permit construction of dwelling units utilizing conditional commitments as authorized in the RHS program regulations.

(12) All subordination requests will be forwarded to OGC for review. The guidance of OGC should be obtained in the preparation of the documents necessary to effect the subordination.

(13) The subordination is for a specific amount.

(14) The proposed action will not change the nature of the borrower's activities so as to make it ineligible for appropriate loan program assistance.

(15) The subordination must not adversely impact the agency's ability to service the loan according to program regulations, and has been determined to be within the bounds of good judgment considering the intent, funding

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limitations, and respective program authorities.

(16) An agreement to provide notice of foreclosure must be obtained from any new prior lienholder as required in subpart B of part 1927 of this chapter. As appropriate, any junior lienholders consent to the transaction and use of proceeds will be obtained prior to approval of the transaction.

[49 FR 49587, Dec. 21, 1984; 50 FR 21583, May 28, 1985, as amended at 56 FR 67484, Dec. 31, 1991]

## § 1965.80 [Reserved]

### § 1965.81 Severance agreements.

(a) *General policies.* Severance agreements or other instruments of similar effect under which a borrower may acquire through other credit, items such as laundry equipment, air conditioning units, and basic household furnishings that will not become part of real estate security, may be approved by the State Director, provided:

(1) The transaction will not adversely affect the FmHA or its successor agency under Public Law 103-354's security position and any additional obligations incurred will be within the borrower's repayment ability.

(2) The items covered by the severance agreement are needed in the successful operation of the security property.

(3) The financing arrangements are otherwise sound and proper.

(b) *Handling requests.* Requests will be made on Form FmHA or its successor agency under Public Law 103-354 465-1. The District Director will forward to the State Director a properly completed and executed Form FmHA or its successor agency under Public Law 103-354 465-1, any proposed severance agreement, the case file, and specific recommendations regarding the request.

(c) *Consent and approval.* The State Director will indicate approval or disapproval on Form FmHA or its successor agency under Public Law 103-354 465-1. The OGC will be requested to prepare or approve the form of severance agreement and issue any special instructions when necessary.