

§ 1965.82 [Reserved]

§ 1965.83 Consent to junior liens.

(a) *General policies.* Borrowers will be strongly discouraged from giving junior liens to other creditors on the FmHA or its successor agency under Public Law 103-354 security property. Each request for consent to junior liens will be made on Form FmHA or its successor agency under Public Law 103-354 465-1.

(b) *Conditions of approval.* The State Director may approve a junior lien if the request for the lien is authorized prior to the lien being placed against the property under the following conditions:

(1) The junior lien will enable the borrower to obtain additional credit to make needed improvements or repairs on the security property for purposes for which a loan of the same type involved could be made and funds in the reserve account have been depleted. Except, zero interest loans available from other Federal, State or local agencies, authorities, or commissions; and those from utility companies regulated by such governmental bodies, may be secured by a junior lien when the State Director determines it is in the best interest of the FmHA or its successor agency under Public Law 103-354, borrower and tenants irrespective of the balance in the reserve account.

(2) The junior lien will improve the borrower's total financial condition or debt-paying ability as it relates to the multiple family housing project.

(3) The terms of the junior lien will not jeopardize the borrower's ability to repay the FmHA or its successor agency under Public Law 103-354 indebtedness and, in the case of RRH, RCH, and LH loans, will not result in increased rental rates for the project unless authorized according to exhibit C to subpart C of part 1930 of this chapter.

(4) The junior creditor agrees in writing that foreclosure action under their lien will not be initiated before holding a discussion with the District Director and after giving a reasonable period of notice to FmHA or its successor agency under Public Law 103-354, and any operating plans of the junior lien holder are consistent with FmHA or its

successor agency under Public Law 103-354 requirements.

(5) Security for the junior lien must not include project income or revenue.

(6) No junior liens will be authorized in connection with a transfer of ownership.

(7) The total debt (including the outstanding FmHA or its successor agency under Public Law 103-354 loan balance) is within the State Director's approval authority.

(8) All other requests for consent to junior liens must be submitted to the National Office with complete comments and recommendations from both the District Director and State Director, and all of the borrower's case files. Such requests will be reviewed on a case-by-case basis and appropriate authorization given or withheld depending on the individual merits of the proposal and its compatibility with the respective loan program requirement.

(9) When a junior lien is placed on any property without the prior consent of FmHA or its successor agency under Public Law 103-354, the account will be serviced for liquidation with the guidance of OGC according to the security instruments. However, the State Director may request permission to post approve the junior lien by submitting a formal request to the National Office provided he/she determines that all other conditions set forth in this section are met.

§ 1965.84 [Reserved]

§ 1965.85 Default and liquidation.

(a) *General.* Liquidation will be recommended only after all efforts by FmHA or its successor agency under Public Law 103-354 officials have failed to effect a satisfactory solution whereby the borrower will comply with its obligations under the note, mortgage, loan agreements or resolution, and all related security agreements and other instruments. Liquidation, whether by voluntary conveyance or foreclosure, will be handled in strict accordance with the provisions of subpart A of part 1955 of this chapter. FmHA or its successor agency under Public Law 103-354 Form 1965-11, "Accelerated Repayment Agreement," *will not* be used in lieu of foreclosure for RRH, LH, or RCH loans