

§ 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

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unless specific prior written authorization is received from the National Office.

(b) *Servicing delinquent accounts.* Delinquent multiple housing accounts will be serviced according to the respective program requirements and the following:

(1) The District Director will service delinquent accounts with guidance and assistance as necessary from the State Director. Every delinquent borrower will be serviced according to a routine established for the particular loan type by the State Director. The following sequential steps should be taken for each delinquent account:

(i) Each quarterly delinquency Report Code 616 and 621 or other official FmHA or its successor agency under Public Law 103-354 Report will be reviewed for accuracy by the State Director. The following delinquency classification system for multi-housing accounts may be used. The District Director will classify each account on the Report Code 621, as follows:

- D1—Delinquent; a servicing plan or action has not been formulated
- D2—Audit trail has been completed to verify amount delinquent
- D3—Agreement has been made with borrower to become current within a set period
- D4—Transfer or substitution of membership interests is in process to correct the delinquency
- D5—Reamortization is in process
- D6—Account has been accelerated
- D7—Borrower is in bankruptcy
- D8—Voluntary conveyance is planned
- D9—A subsequent loan is planned to correct delinquency
- D10—Other (litigation, abandonment before action taken, etc.)
- C1—Current (D/O records show the account current)
- C2—Audit trail completed that shows D/O or F/O error (double maturities, misapplication, etc.) and action taken has been taken to correct the error
- C3—Account paid current since latest Report Code 616 or 621
- C4—Other
- C5—Requesting an exception to the late fee charged to the account according to subpart K of part 1951 of this chapter, when appropriate.
- X1—Property in inventory (from foreclosure, voluntary conveyance or bankruptcy)
- X2—Credit Sale finalized
- X3—Charge-off of account in process
- X4—Transfer or reamortization closed; waiting for F/O to process

X5—Other

(ii) if the report is in error, the District Director will immediately contact the Finance Office and provide any information necessary to correct the report and/or remove the account from the delinquent status. These communications with the Finance Office should be directed to the Multiple-Family Housing unit. Before contacting the Finance Office, the District Director must complete a field audit of the account to be submitted with the inquiry.

(iii) If the report is accurate and a delinquency indeed exists, the District Director will immediately contact the borrower to determine the reason for the delinquency and will attempt to collect either in a lump sum or in additional monthly payments over a short period of time, usually not to exceed one year. This should include foregoing any cash return until the account is current.

(iv) Within 30 days of receipt of the quarterly delinquency report, the District Director will submit to the State Director a detailed report with specific comments and recommendations for servicing each delinquent account. This report will classify the accounts and indicate which accounts are actually delinquent. Emphasis will be placed on performing delinquency servicing actions to reduce true delinquencies. The State Director will assist the District Director in developing a realistic servicing plan for each delinquent account. The State Director will prepare a statewide delinquency reduction plan annually and update it quarterly based on the delinquency reports and information provided by the District Directors. Appropriate consideration should be given to reamortizing, transferring, conveying or foreclosing accounts recognizing the willingness of the borrower to cooperate and comply with FmHA or its successor agency under Public Law 103-354 requirements and to meet the purposes for which the loan was made. Consideration should also be given to:

- (A) Adequate budgeting of project income and expenses.
- (B) Improving management and outreach.

(C) Implementing interest credit and/or rental assistance if the borrower and project qualify.

(D) Participating in the HUD Section 8 program for existing housing through the local Public Housing Agency (PHA).

(E) Effecting a justified rent increase according to applicable program requirements.

(F) Obtaining an assignment of project income.

(2) District Directors should be firm in dealing with the borrower or the borrower's representative. However, the management agent is not the party ultimately responsible for the loan, and it is therefore imperative that the borrower fully understand the consequences of the default. Courtesy, cooperation and sound judgment must be involved. If the delinquent account cannot be brought current within a reasonable period, steps should be taken according to subpart A of part 1955 of this chapter to protect the Government's interest.

(c) *Failure to maintain reserves.* A borrower's failure to maintain adequate reserves should be treated in a manner similar to delinquent accounts. The District Director should carefully monitor the required transfers to the reserve account. Borrowers who fail to make the required transfers or use reserve funds without prior FmHA or its successor agency under Public Law 103-354 authorizations should be carefully counseled. Demand should be made upon borrowers misusing the reserve account to promptly correct any deficiency. As appropriate, the District Director may request assistance from the State Director. As necessary to protect the Government's interests, assistance from OGC should be requested through the State Office.

(d) *Nonmonetary defaults.* Attempts to resolve nonmonetary defaults should be handled whenever possible at the District Office level with appropriate guidance and assistance from the State Office. The State Director should counsel with OGC, to determine the appropriate servicing actions in those cases where nonmonetary defaults cannot be resolved at the District Office level. These actions may include liquidation of the account.

(e) *Liquidation.* Liquidation of all multiple-family type loans will be handled according to the applicable portions of subpart A of part 1955 of this chapter. In cases of forced liquidation where the acceleration notice has been delivered and the borrower has willfully failed to make the required loan payments, eligible tenants are not occupying the units and/or the borrower is not collecting the approved rents or transmitting the required payments to FmHA or its successor agency under Public Law 103-354, any outstanding interest credit agreement will be cancelled after the appeal period prescribed in subpart B of part 1900 of this chapter has expired. However, the rental assistance agreement will not be cancelled until the foreclosure action has been completed and the redemption period has expired according to paragraph XIV B 5 of exhibit E of subpart C of part 1930 of this chapter. In no cases will RA be renewed during the redemption period. In all liquidation cases, the State Director will be responsible for the final decision to liquidate the account based upon an opinion from the OGC and the following information supplied by the District Director:

(1) The specific recommendations of the District Director on the method of carrying out the liquidation,

(2) The case file and any other pertinent information developed in support of the accusations,

(3) A summary of FmHA or its successor agency under Public Law 103-354 efforts to work out an acceptable solution short of liquidation,

(4) A current appraisal of the security property 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) will be completed by an FmHA or its successor agency under Public Law 103-354 official authorized to make that particular type of appraisal and an estimate of the net amount that may be realized from the sale of the assets,

(5) The most recent balance sheet or financial statement from the borrower,

(6) A current statement of account from the Finance Office, and

(7) A problem case report using Form FmHA or its successor agency under

§ 1965.86

Public Law 103-354 465-7, "Report on Real Estate Problem Case," or exhibit A to subpart A of part 1955 of this chapter as appropriate.

[49 FR 49587, Dec. 21, 1984, as amended at 50 FR 8605, Mar. 4, 1985; 51 FR 11564, Apr. 4, 1986]

§ 1965.86 [Reserved]

§ 1965.87 Miscellaneous security.

(a) *Membership liability agreements.* As a loan approval requirement, some borrowers may have special agreements with members of the organization for the purchase of shares of stock or for the payment of a pro rata share of the loan in the event of default, or they may have instruments which are commonly referred to as individual liability agreements which are usually assigned to and held by the FmHA or its successor agency under Public Law 103-354 as additional security for the loan. In other cases the borrower's note may be endorsed by individuals. These security and liability instruments will be serviced in a manner indicated by the agreements to adequately protect the interest of the FmHA or its successor agency under Public Law 103-354. The State Director will develop servicing actions with the assistance of OGC.

(b) *Other security.* Other security such as collateral assignments, assignments of rents, Housing Assistance Payments Contracts, and notices of lienholder interest will be serviced according to acceptable practices in the respective states. The State Director should develop any special servicing actions with the assistance of OGC to protect the interest of FmHA or its successor agency under Public Law 103-354. Evidence of the security will be filed in the loan docket in the District Office. A notation will be made on the Management System Card showing that the security has been retained. When other security is taken, a plan for servicing it should be developed by the approval official and included as an approval condition at the outset.

§ 1965.88 Obtaining additional security for inadequately secured loans.

(a) *General policies.* As a general policy, additional security for multiple housing loans should not be needed or taken to protect the interest of FmHA

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or its successor agency under Public Law 103-354. However, the State Director may authorize taking additional security in the form of real estate or other security as described in § 1965.87(b) of this subpart when the additional security is needed to enhance the chances that the FmHA or its successor agency under Public Law 103-354 will not suffer a loss and any of the following conditions exist:

(1) The account is behind schedule.

(2) The property has not been properly managed or maintained.

(3) There is serious doubt that the borrower can carry out the objectives of the loan.

(b) *Conditions of approval.* In cases where the District Director determines that the conditions as stated in paragraph (a) of this section exist, the borrower's case file will be forwarded to the State Director with a memorandum providing the following information:

(1) The facts which justify the taking of additional security.

(2) A conservative estimate of the market value of any real estate to be mortgaged; however, it will not be necessary to make a formal appraisal of the property to be mortgaged unless determined necessary by the State Director.

(3) A brief description of any existing liens on the additional security including the repayment terms and the unpaid balance.

(4) The name of the title holder and how title to the property is held. Title evidence need not be required.

(5) A plan for servicing the additional security to be taken.

(6) A description of the other servicing alternatives available to assure that the objectives of the loan will be met and to protect the Government from loss.

(c) *Processing.* The guidance and assistance of OGC will be obtained whenever additional security is taken. The highest quality security available will be taken whenever additional security is considered.

[49 FR 49590, Dec. 21, 1984. Redesignated at 55 FR 29564, July 20, 1990]