

Rural Housing Service, USDA

§ 3560.460

reserves, letters of credit, or other security when needed to improve the chances that the Agency will not suffer a loss, and when:

- (1) The account is in default; or
- (2) The property has not been properly managed or maintained.

(d) *Due diligence.* When the Agency has completed an environmental review in accordance with 7 CFR part 1940, subpart G, and decides not to acquire security property through liquidation action or chooses to abandon its security interest in real property, whether due in whole or in part, to the presence of contamination from hazardous substances, hazardous wastes, or petroleum products, the Agency will provide the appropriate environmental authorities with a copy of its due diligence report.

§ 3560.459 Special borrower circumstances.

(a) *Deceased borrower, bankruptcy, insolvency, and divorce actions.* The Agency will address borrower accounts affected by special circumstances such as death, bankruptcy, insolvency, and divorce on a case-by-case basis. The Agency will make servicing decisions in such cases on the basis of best interest to the Federal Government and tenants. The Agency will bring a legal action to establish the legal capacity of the borrower to administer the project if found necessary to protect the government's interests. In order for the Agency to make servicing decisions in such cases, the borrower or the borrower's representative will provide to the Agency:

- (1) On the part of the heirs or executor of the borrower's estate, evidence of legal action due to a will or court actions that establish who is to become the owner;
- (2) The financial status of the borrower and any member pledging additional security for the debt;
- (3) The status of the security property; and
- (4) The impact of the identified actions on the operation of the project.

(b) *Membership liability agreements.* If a borrower's note is endorsed by individuals other than the borrower or a borrower has security 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 has individual liability agreements, which are usually assigned to and held by the Agency as additional security for the loan, the security and liability agreements must be adequate to protect the Agency's interest.

(c) *Security issues in participation loans.* When a multi-family housing (MFH) project is receiving financing or a subsidy from sources other than the Agency, the Agency will service the account in accordance with the participation agreements made with the Agency and the other funding sources under § 3560.65.

§ 3560.460 Double damages.

(a) *Action to recover assets or income.* (1) The Agency may request to the Attorney General to bring an action in a United States district court to recover any assets or income used by any person in violation of the provisions of a loan made by the Agency under this section or in violation of any applicable statute or regulation.

(2) For the purposes of this section, a use of assets or income in violation of the applicable loan, statute, or regulation includes any use for which the documentation in the books and accounts does not establish that the use was made for a reasonable operating expense or necessary repair of the project or for which the documentation has not been maintained in accordance with the requirements of the Agency and in reasonable condition for proper audit.

(3) For the purposes of this section, the term "person" means:

- (i) Any individual or entity that borrows funds in accordance with programs authorized by this section;
- (ii) Any individual or entity holding 25 percent or more interest in any entity that the Agency funds in accordance with programs authorized by this section; and
- (iii) Any officer, director, or partner of an entity that borrows funds in accordance with programs authorized by this section.

(b) *Amount recoverable.* (1) In any judgment favorable to the United States entered under this section, the