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(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 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

case, after the final judgment or award has been granted and is not appealed, the necessary adjustments in project operation will be approved to comply with the court order.

(2) The transaction will not interfere with the successful operation of the multiple housing project or prevent the borrower from carrying out the purpose for which the loan was made. This requirement will not apply in the case of a condemnation action in which a final judgment or award has been made and is not appealed.

(3) The sale of individual units or developed portions of an RRH, RCH or LH project shall require the prior concurrence and authorization of the National Office.

(4) If property to be sold or exchanged is to be used for the same or similar purpose for which the FmHA or its successor agency under Public Law 103–354 loan or grant was made, the purchaser shall execute Form FmHA or its successor agency under Public Law 103–354 400–4. The agreement will remain in effect as long as the property continues to be used for the same or similar purpose for which the FmHA or its successor agency under Public Law 103–354 loan or grant was made.

(5) The consideration is at least equal to the market value of the security property disposed of or the rights being granted. However, right-of-way easements may be granted or conveyed without consideration or with only the minimal consideration being offered if the approval official determines: the value of the security property will not be reduced; its suitability for the intended purpose will not be impaired; and the easement is granted for the borrower to develop additional lots or units which will be integrated into the project or to a public body for enhancement of streets or utilities benefitting the project.

(i) An FmHA or its successor agency under Public Law 103–354 official authorized to appraise multi-unit housing properties shall either make 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) if the current appraisal is more than one year old, or supplement the present appraisal report by inserting in or attaching to the ''Remarks'' section, information as to the market value of the security disposed; or

(ii) The approval official may also accept a value determination for such easements which has been provided by other competent sources at no cost to the Government which is mutually acceptable to the borrower and FmHA or its successor agency under Public Law 103–354;

(iii) However, if the proceeds are to be used for development or enlargement, a new appraisal reflecting the market value of the security property as improved or enlarged will be made in all cases.

(iv) The State Director may request an appraisal for any transaction under this section involving security property whenever necessary.

(6) The remaining property is adequate security for the unpaid balance of the FmHA or its successor agency under Public Law 103–354 loan, or the transaction will not adversely affect FmHA or its successor agency under Public Law 103–354's security position or interfere with the successful operation of the security property.

(7) The proceeds from the disposition of the security are used for one or more of the following purposes:

(i) To pay the customary incidental closing costs such as title and recording fees appropriate to the transaction, including additional real estate tax the borrower is required to pay for the year for which arrangements to pay cannot otherwise be made.

(ii) To pay debts owed to any prior lienholders.

(iii) To make extra payments on the FmHA or its successor agency under Public Law 103–354 loan.

(iv) To pay costs necessary to determine the reasonableness of an offer or asking price, such as fees for appraisal of minerals, land, or timber where the necessary appraisal cannot be obtained without costs.

(v) To pay real estate brokers' commission if a borrower can reasonably expect to obtain proceeds in an amount at least equal to the commission in excess of what could otherwise be obtained had the sale been made without

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