

## Farm Service Agency, USDA

## § 763.20

the guarantee, and provide an annual inspection report to the Agency;

(6) Obtain from the buyer a current balance sheet, income statement, cash flow budget, and any additional information needed, perform, and provide the Agency an analysis of the buyer's financial condition on an annual basis;

(7) Notify the Agency on March 31 and September 30 of each year of the outstanding balance on the Land Contract and the status of payment;

(8) Send a notice of payment due to the buyer at least 30 days prior to the installment due date;

(9) Notify the Agency and the seller if the buyer defaults;

(10) Service delinquent accounts as specified in § 763.20(b); and

(11) Perform other duties as required by State law and as agreed to by the buyer and the seller.

### § 763.19 Contract modification.

(a) The seller and buyer may modify the land contract to lower the interest rate and corresponding amortized payment amount without Agency approval.

(b) With prior written approval from the Agency, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. Such modifications may include but are not limited to:

(1) Deferral of installments,

(2) Leasing or subleasing, and

(3) Partial releases. All proceeds from a partial release or royalties from mineral extraction must be applied to a prior lien, if one exists, and in addition, the same amount must be credited to the principal balance of the land contract.

(4) Transfer and assumption. If the guarantee is to remain in effect, any transfer of the property and assumption of the guaranteed debt must be made to an eligible buyer for the Land Contract Guarantee Program as specified in § 763.5(b), and must be approved by the Agency in writing. If an eligible buyer for transfer and assumption cannot be found, the Deputy Administrator for Farm Loan Programs may make an exception to this requirement

when in the Government's best financial interests.

(5) Assignment. The seller may not assign the contract to another party without written consent of the Agency.

(c) Any contract modifications other than those listed above must be approved by the Deputy Administrator for Farm Loan Programs, and will only be approved if such action is determined permissible by law and in the Government's best financial interests.

### § 763.20 Delinquent servicing and collecting on guarantee.

(a) *Prompt payment guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract or taxes or insurance when due, the escrow agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, taxes, or insurance and send a copy of the demand letter to the Agency and to the seller; and

(2) Must make demand on the Agency within 90 days from the original payment, taxes, or insurance due date, for the missed payment in the event the buyer has not made the payment.

(b) *Standard guarantee plan.* If the buyer fails to pay an annual amortized installment or a portion of an installment on the contract, then the seller has the option of either liquidating the real estate, or having the amount of the loss established by the Agency by an appraisal of the real estate. For either option, the servicing agent:

(1) Must make a written demand on the buyer for payment of the defaulted amount within 30 days of the missed payment, and send a copy of the demand letter to the Agency and to the seller; and

(2) Must immediately inform the Agency which option the seller has chosen for establishing the amount of the loss, in the event the buyer does not make the payment within 60 days of the demand letter.

(i) *Liquidation method.* If the seller chooses the liquidation method, the servicing agent will:

(A) Submit a liquidation plan to the Agency within 120 days from the missed payment for approval prior to any liquidation action. The Agency

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may require and pay for an appraisal prior to approval of the liquidation plan.

(B) Complete liquidation within 12 months of the missed installment unless prevented by bankruptcy, redemption rights, or other legal action.

(C) Credit an amount equal to the sale price received in a liquidation of the security property, with no deduction for expenses, to the principal balance of the land contract.

(D) File a loss claim immediately after liquidation, which must include a complete loan ledger.

(E) Base the loss claim amount on the appraisal method if the property is reacquired by the seller, through liquidation.

(ii) *Appraisal method.* If the seller chooses to have the loss amount established by appraisal rather than liquidation, the Agency will complete an appraisal on the real estate, and the loss claim amount will be based on the difference between the appraised value at the time the loss is calculated and the unpaid principal balance of the land contract at that time.

(A) The only administrative appeal allowed under § 761.6 of this chapter related to the resulting appraisal amount will be a determination of whether the appraisal is Uniform Standards of Professional Appraisal Practice (USPAP) compliant.

(B) The seller will give the Agency a lien on the security property in the amount of the loss claim payment. If the property sells within 5 years from the date of the loss payment for an amount greater than the appraised value used to establish the loss claim amount, the seller must repay the difference, up to the amount of the loss claim. For purposes of determining the amount to be repaid (recapture), the market value of the property may be reduced by the value of certain capital improvements, as specified in § 766.202(a)(1)–(3) of this chapter, made by the seller to the property in the time period from the loss claim to final disposition. If the property is not sold within 5 years from the date of the loss payment, the Agency will release the lien and the seller will have no further obligation to the Agency.

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### § 763.21 Establishment of Federal debt and Agency recovery of loss claim payments.

(a) Any amount paid by FSA as a result of an approved loss claim is immediately due and payable by the buyer after FSA notifies the buyer that a loss claim has been paid to the seller. If the debt is not restructured into a repayment plan or the obligation otherwise cured, FSA may use all remedies available, including offset as authorized by the Debt Collection Improvement Act of 1996, to collect the debt.

(1) Interest on the debt will be at the FLP non-program real property loan rate in effect at the time of the first Agency payment of a loss claim.

(2) The debt may be scheduled for repayment consistent with the buyer's repayment ability, not to exceed 7 years. Before any payment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets. This includes the buyer's ownership interest in the real estate under contract for guarantees using the prompt payment guarantee plan. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by individual members of the entity, including their ownership interest in the real estate under contract.

(b) Annually, buyers with an Agency approved repayment plan under this section will supply the Agency a current balance sheet, income statement, cash flow budget, complete copy of Federal income tax returns, and any additional information needed to analyze the buyer's financial condition.

(c) If a buyer fails to make required payments to the Agency as specified in the approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed as specified in § 766.351(c) of this chapter.

### § 763.22 Negligence and negligent servicing.

(a) The Agency may deny a loss claim in whole or in part due to negligence that contributed to the loss claim. This could include, but is not limited to: