

§ 1980.367

7 CFR Ch. XVIII (1-1-07 Edition)

in effect. RHS will note the transfer and assumption on the original loan note guarantee by completing the Assumption Agreement block by inserting the name of the assuming party.

(1) *Material furnished to RHS after closing.* Immediately after closing, the Lender must furnish to RHS:

(1) A conformed copy of the executed assumption agreement.

(2) A statement showing:

(i) Any changes made in the provisions of the promissory note or security instruments.

(ii) That all conditions and requirements of paragraph (b) of this section have been met.

(iii) That the required insertions have been made per paragraph (h) of this section.

(m) *Notification of Lender.* The RHS approval official will review the proposed transfer and assumption and notify the Lender of the decision in writing. The request for transfer and assumption will be treated as an application for guaranteed loan assistance and will be handled in accordance with § 1980.353. The Lender may proceed with the transfer and assumption upon obtaining RHS approval.

§ 1980.367 Unauthorized sale or transfer of the property.

RHS consent is required to continue with the RHS guarantee in the event of a sale or transfer of the property in accordance with § 1980.366. If the property is transferred without RHS consent, the Lender must take one of the following actions:

(a) Obtain RHS consent if the conditions of § 1980.366 can be met;

(b) Satisfy the RHS guarantee and continue with the loan without the loan note guarantee; or

(c) Notify the borrower and the transferee of the default and service the loan in accordance with § 1980.371.

§§ 1980.368-1980.369 [Reserved]

§ 1980.370 Loan servicing.

RHS encourages Lenders to provide borrowers with the maximum opportunity to become successful homeowners. Lenders should provide sufficient servicing and counseling to meet the objectives of the loan. Loan serv-

icing should be approached as a preventive action rather than a curative action. Prompt followup by the Lender on delinquent payments and early recognition and solution of problems are keys to resolving many delinquent loan cases. The Lender shall perform those services which a reasonable and prudent Lender would perform in servicing its own portfolio of loans that are not guaranteed.

(a) *Normal loan servicing.* The Lender is responsible for servicing the loan under the Lender Agreement and this subpart even if the Lender has engaged a third party to service the loan on its behalf. Normal servicing includes:

(1) Receiving all payments as they fall due and proper application of payments to principal and interest and escrow accounts for taxes (including special assessments) and insurance.

(2) Establishment and maintenance of an escrow account to pay real estate taxes and assessments and required hazard and flood insurance on the security. All escrow accounts must be fully insured by the Federal Deposit Insurance Corporation (FDIC). The Lender is responsible for maintaining escrow funds in a reasonable and prudent manner and for assuring that real estate taxes and assessments and required hazard and flood insurance are paid in a timely manner even if it requires advancing the Lender's own funds. The monthly payment may be adjusted when it is not adequate to meet established charges of the escrow account for the coming year. Escrow funds may be used only for the purpose for which they were collected.

(3) Obtaining compliance with the covenants, loan agreement (if any), security instruments, and any supplemental agreements and notifying the borrower in writing of any violations.

(b) *Other servicing requirements.* Other servicing requirements include taking actions to offset the effects of liens, probate proceedings, and other legal actions. The Lender's responsibility includes assuring that:

(1) Insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuild or otherwise acquire needed replacement collateral.

(2) The borrower complies with laws and ordinances applicable to the loan and the collateral.

(3) The borrower is not released of liability for the loan except as provided in Agency regulations.

(c) *Servicing options.* The Lender should make every effort to assist borrowers who are cooperative and willing to make a good faith effort to cure the delinquency. The Lender should consider the borrower's financial condition in attempting to work out repayment agreements. The Lender may revise the payment schedule of the loan on a temporary basis with the written concurrence of the borrower. Changes in the loan repayment such as reamortization of the unpaid balance within the remaining term of the loan may be done with prior written RHS concurrence. Reamortization shall not change the amount of the loan guarantee.

(d) *Lender reporting to RHS.* Reports on Lender servicing case loads and performance are required as follows:

(1) *Monthly report.* The Lender must prepare and submit a report in a manner prescribed by RHS identifying each borrower with a loan that is more than 30 days delinquent.

(2) *Annual report.* The Lender will submit an annual report indicating the status of each borrower account as of December 31 using the format prescribed by RHS.

(e) [Reserved]

§ 1980.371 Defaults by the borrower.

Default occurs when the borrower fails to perform under any covenant of the mortgage or Deed of Trust and the failure continues for 30 days. The Lender will negotiate in good faith in an attempt to resolve any problem. The borrower must be given a reasonable opportunity to bring the account current before any foreclosure proceedings are started.

(a) The Lender must make a reasonable attempt to contact the borrower if the payment is not received by the 20th day after it is due.

(b) The Lender must make a reasonable attempt to arrange and hold an interview with the borrower for the purpose of resolving the delinquent account before the loan becomes 60 days delinquent. Reasonable effort consists

of not less than one letter sent to the borrower at the property address via certified mail or similar method which the borrower refuses to accept or fails to respond.

(c) If the Lender is unable to make contact with the borrower, the Lender must determine whether the property has been abandoned and the value of the security is in jeopardy before the account becomes two payments delinquent.

(d) When the loan becomes three payments delinquent, the Lender must report borrower delinquencies to credit repositories and make a decision with regard to liquidation of the account. The Lender may proceed with liquidation of the account unless there are extenuating circumstances.

§ 1980.372 Protective advances.

Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument. Protective advances are advances made for expenses of an emergency nature necessary to preserve or protect the physical security. Attorney fees are not a protective advance. The Lender will not make protective advances in lieu of an additional loan. In order to assure that a protective advance over \$500 will be included in the loss payment, Lenders are encouraged to obtain prior RHS approval.

§ 1980.373 [Reserved]

§ 1980.374 Liquidation.

If the Lender concludes the liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the Lender will notify RHS of the decision to liquidate. Initiation of foreclosure begins with the first public action required by law such as filing a complaint or petition, recording a notice of default, or publication of a notice of sale. Foreclosure must be initiated within 90 days of the date the decision to liquidate is made unless the foreclosure has been delayed by law. When there is a legal delay (such as