

agency under Public Law 103-354 465-1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(c) *Management agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of part 1942, subpart A of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office).

(d) *Affiliation agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in §1942.17(b)(4) of subpart A of part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a non-program loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(e) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

- (1) A copy of the proposed agreement;
- (2) Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed;
- (3) Any other necessary supporting information.

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 21199, May 19, 1992]

#### § 1951.225 Liquidation of security.

When the District Director believes that continued servicing will not ac-

complish the objectives of the loan, he or she will complete Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA or its successor agency under Public Law 103-354 security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to subpart A of part 1955 of this chapter.

#### § 1951.226 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale; one or more members of the borrower's organization proposes to purchase the property; it is proposed to sell the property for less than the appraised value; or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA or its successor agency under Public Law 103-354 policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

- (1) The consideration is adequate;
- (2) The release will not prevent carrying out the purpose of the loan;
- (3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA or its successor agency under Public Law 103-354's security position;

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(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA or its successor agency under Public Law 103-354 400-4, "Assurance Agreement." The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA or its successor agency under Public Law 103-354 a written agreement assuming all rights and obligations of the original grantee if grant funds were provided. See § 1951.215 of this subpart for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA or its successor agency under Public Law 103-354 debts according to § 1951.221 of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA or its successor agency under Public Law 103-354's advantage.

(ii) To purchase or acquire through exchange property more suited to the borrower's needs, if the FmHA or its successor agency under Public Law 103-354 debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA or its successor agency under Public Law 103-354 grant funds will be handled in accordance with the grant agreement.

(c) *Processing.* (1) The case file will contain the following:

(i) Except for actions approved by the District Director, Exhibit A of this subpart (available in any FmHA or its successor agency under Public Law 103-354 office), appropriately completed;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA or its successor agency under Public Law 103-354 1965-8, "Release from Personal Liability," including the County Committee memorandum and the State Director's recommendations;

(v) An executed Form FmHA or its successor agency under Public Law 103-354 400-4, if applicable;

(vi) An executed Form FmHA or its successor agency under Public Law 103-354 465-1, if applicable;

(vii) Form FmHA or its successor agency under Public Law 103-354 460-4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC; and

(viii) Written approval of the Administrator when required under § 1951.226(a)(3) of this subpart;

(2) *Releasing security.* (i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.226(b) of this subpart and § 1962.17 and § 1962.27 of subpart A of part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA or its successor agency under Public Law 103-354 460-1, "Partial Release," or Form FmHA or its successor agency under Public Law 103-354 462-12, "Statements of Continuation, Partial Release, Assignment, Etc."

(ii) Subject to § 1951.226(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA or its successor agency under Public Law 103-354 465-1. Partial release of real estate security may be made by use of Form FmHA or its successor agency under Public Law 103-354 460-1 or other form approved by OGC.

(3) FmHA or its successor agency under Public Law 103-354 liens will not be released until the sale proceeds are received for application on the Government's claim. In states where it is necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance

of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, the amounts shown on the statement of actual costs furnished by the insured lender may be deducted from the sale proceeds.

(d) *Release from liability.* (1) When an FmHA or its successor agency under Public Law 103-354 debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA or its successor agency under Public Law 103-354 1965-8.

(2) When sale proceeds are not sufficient to pay the FmHA or its successor agency under Public Law 103-354 debt in full, any balance remaining will be handled in accordance with procedures for debt settlement actions set forth in subpart C of part 1956 of this chapter.

(i) In determining whether a borrower should be released from liability, the State Director will consider the borrower's debt-paying ability based on its assets and income at the time of the sale.

(ii) Release from liability will be accomplished by using Form FmHA or its successor agency under Public Law 103-354 1965-8 and obtaining from the County Committee a memorandum recommending the release which contains the following statement:

\_\_\_\_\_ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

[55 FR 4399, Feb. 8, 1990, as amended at 69 FR 70884, Dec. 8, 2004]

#### § 1951.227 Protective advances.

The State Director is authorized to approve, without regard to any loan or total indebtedness limitation, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA or its successor agency under Public Law 103-354 if the

debt instrument provides that FmHA or its successor agency under Public Law 103-354 may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(a) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(b) Protective advances are not to be used as a substitute for a loan.

(c) Vouchers are prepared in accordance with applicable procedures set forth in 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).

[55 FR 4399, Feb. 8, 1990, as amended at 57 FR 36591, Aug. 14, 1992]

#### §§ 1951.228-1951.229 [Reserved]

#### § 1951.230 Transfer of security and assumption of loans.

(a) *General.* It is FmHA or its successor agency under Public Law 103-354 policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA or its successor agency under Public Law 103-354's security position or the FmHA or its successor agency under Public Law 103-354 program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA or its successor agency under Public Law 103-354 is not less than it would be if the transfer were to an ineligible applicant.