

(ii) *Open listing agreement.* A uniform fee or commission schedule, by property type, will be established by the servicing official within a given sales area. The commission rate to be paid will be the typical rate for such services in the sales area and will not exceed or be lower than commissions paid for similar types of services provided by the broker to other sellers of similar property.

(2) *Special effort sales bonuses.* The servicing official may request authorization from the State Director to pay fixed amount bonuses for special effort property, such as a property with a value so low that the commission alone does not warrant broker interest or property that has been held in inventory for an extended period of time where it is believed that an added bonus will create additional efforts by the broker to sell the property. The State Director may authorize use of short-term (not to exceed three months) special effort sales bonuses on a group, county, district or state-wide basis, if it appears necessary to facilitate the sale of nonprogram property.

(3) *Payment of commission.* Payment of a broker's commission is contingent on the closing of the sale and will not be paid until the sale has closed and title has passed to the purchaser. No commission will be paid where the sale is to the broker, broker's salesperson(s), to persons living in his/her or salesperson(s) immediate household or to legal entities in which the broker or salesperson(s) have an interest if the sale is contingent upon receiving Rural Development credit. If credit is not being extended in these instances (a cash sale), a commission will be paid. Under an exclusive broker contract, if a cooperating broker purchases the property and is receiving Rural Development credit, one-half the respective commission will be paid to the exclusive broker. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate Rural Development official by completing Form AD-838 and processing Form RD 838-B for payment in accordance with the respective FMI's, and charged to the in-

ventory account as a nonrecoverable cost.

(g) *Nondiscrimination.* Brokers who execute listing agreements with Rural Development shall certify to nondiscrimination practices as provided in Form RD 1955-42. In addition, all brokers participating in the sale of property shall sign the nondiscrimination certification on Form RD 1955-45.

[53 FR 27836, July 25, 1988, as amended at 55 FR 3943, Feb. 6, 1990; 62 FR 44401, Aug. 21, 1997; 68 FR 61332, Oct. 28, 2003]

§ 1955.131 Auctioneers.

The services of licensed auctioneers, if required, may be used to conduct auction sales as described in §1955.148 of this subpart and procured by competitive negotiation under the contracting authority of Exhibit C to RD Instruction 2024-A (available in any Rural Development office).

(a) *Selection criteria.* The auctioneer should be selected by evaluating criteria such as proposed sales dates, location, advertising, broker cooperation, innovations, mechanics of sale, sample advertising, personal qualifications, financial capability, private sector financing and license/bonding.

(b) *Commission.* Rural Development may not set the commission rate in an auctioneer solicitation/contract. The rate of commission will be one of the evaluation criteria in the solicitation. However, any offeror that submits an offer with a commission rate lower than the typical rate for such services in the area must include documentation that they have successfully sold properties at the lower rate with no compromise in services. The solicitation/contract will explicitly detail this policy. Commissions will be paid at closing if sufficient cash to cover the commission is paid by the purchaser. Otherwise, the commission will be paid by the appropriate Rural Development official completing Form AD-838 and processing Form RD 838-B for payment in accordance with the respective FMI's, and charged to the inventory account as a nonrecoverable cost.

(c) *Auctioneer restriction.* The auctioneer, his/her sales agents, cooperating brokers or persons living in his, her or their immediate household are

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restricted from bidding or from subsequent purchase of any property sold or offered at the auctioneer's sale for a period of one year from the auction date.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

GENERAL

§ 1955.132 Pilot projects.

Rural Development may conduct pilot projects to test policies and procedures for the management and disposition of inventory property which deviate from the provisions of this subpart, but are not inconsistent with the provisions of the authorizing statute or other applicable Acts. A pilot project may be conducted by Rural Development employees or by contract with individuals, organizations or other entities. Prior to initiation of a pilot project, Rural Development will publish notice in the FEDERAL REGISTER of its nature, scope, and duration.

[55 FR 3943, Feb. 6, 1990]

§ 1955.133 Nondiscrimination.

(a) *Title VI provisions.* If the inventory real property to be sold secured a loan that was subject to Title VI of the Civil Rights Act of 1964, and the property will be used for its original or similar purpose, or if Rural Development extends credit and the property then becomes subject to Title VI, the buyer will sign Form RD 400-4, "Assurance Agreement." The instrument of conveyance will contain the following statement:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of Title VI of the Civil Rights Act of 1964 and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

(b) *Affirmative Fair Housing Marketing Plan.* Exclusive listing brokers or auctioneers selling SFH properties having 5 or more properties in the same subdivision listed or offered for sale at the same time will prepare and submit to Rural Development an acceptable Form HUD 935.2, "Affirmative Fair

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Housing Marketing Plan," for each such subdivision in accordance with § 1901.203(c) of Subpart E of Part 1901 of this chapter.

(c) *Equal Housing Opportunity logo.* All Rural Development and contractor sale advertisements will contain the Equal Housing Opportunity logo.

§ 1955.134 Loss, damage, or existing defects in inventory real property.

(a) *Property under contract.* If a bid or offer has been accepted by the Rural Development and through no fault of either party, the property is lost or damaged as a result of fire, vandalism, or an act of God between the time of acceptance of the bid or offer and the time the title of the property is conveyed by Rural Development, FmHA or its successor agency under Public Law 103-354 will reappraise the property. The reappraised value of the property will serve as the amount Rural Development will accept from the purchaser. However, if the actual loss based on the reduction in market value of the property as determined by Rural Development is less than \$500, payment of the full purchase price is required. In the event the two parties cannot agree upon an adjusted price, either party, by mailing notice in writing to the other, may terminate the contract of sale, and the bid deposit or earnest money, if any, will be returned to the offeror.

(b) *Existing defects.* Rural Development does not provide any warranty on property sold from inventory. Subsequent loans may be made, in accordance with applicable loan making regulations for the respective loan program, to correct defects.

[50 FR 23904, June 7, 1985, as amended at 53 FR 27837, July 25, 1988]

§ 1955.135 Taxes on inventory real property.

Where Rural Development owned property is subject to taxation, taxes and assessment installments will be prorated between Rural Development and the purchaser as of the date the title is conveyed in accordance with the conditions of Forms RD 1955-45 or RD 1955-46. The purchaser will be responsible for paying all taxes and assessment installments accruing after