

§ 3560.407

other housing projects in accordance with the provisions of subpart F of this part.

(2) The Agency will require that appropriate loan documents are executed by the transferee. The Agency may require such documents to be referenced in security instruments (e.g., mortgage or deed of trust).

(3) If all of a borrower's outstanding Agency debt is not assumed or paid off at the time of the transfer or sale, the Agency will not release a borrower from liability unless the Agency determines that the borrower is unable to pay the remaining debt from assets taken as security through the debt settlement procedure in accordance with § 3560.457.

(1) *Ownership transfers or sales under special rates, terms, and conditions.* Housing projects may be transferred or sold to entities that do not meet borrower eligibility requirements for the type of loans being assumed. However, such a transfer or sale will only be considered when it is determined by the Agency to be in the best interest of the Federal Government and the objectives of the original loan can no longer be met. The following special rates, terms, and conditions will apply to such situations.

(1) The transferee makes a down payment of at least 10 percent of the remaining loan balance to be assumed.

(2) The transferee has the ability to pay the Agency debt.

(3) Monthly or annual installments will be amortized over the term of the loan and the interest rate will be at a rate of interest at least one percent higher than the interest rate offered to eligible borrowers as specified in paragraphs (i)(1) or (2) of this section.

§ 3560.407 Sales or other disposition of security property.

(a) *General.* Borrowers must obtain Agency approval prior to selling or exchanging all or a part of, or an interest in, property serving as security for Agency loans. Agency approval also must be requested and received prior to the granting or conveyance of rights-of-way through property serving as security property. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before

7 CFR Ch. XXXV (1-1-10 Edition)

the Agency approves all such sales or other dispositions of security property.

(b) *Request requirements.* Requests for Agency approval of transactions related to security property must document that the following conditions will be met.

(1) The borrower's ability to repay the Agency debt will not be impaired;

(2) The transaction will not interfere with the successful operation of the housing project or prevent the borrower from carrying out the purpose for which the loan was made.

(3) The monetary or other consideration offered in the transaction is equal to or greater than the market value of the security property being disposed of or the rights being granted, except that right-of-way easements may be granted or conveyed with minimal or no consideration being offered if:

(i) The value of the security property will not be reduced;

(ii) The suitability of the security property for the intended purpose will not be impaired; and

(iii) The easement is granted to allow the borrower to develop additional lots or units that will be integrated into the housing project or for enhancement of streets, utilities or other services provided by a public body.

(4) The property that will remain as security for Agency loans, after any transaction related to security property, will fully secure the borrower's debt to the Agency.

(5) Borrowers must report to the Agency the total of all proceeds derived from the sale or other disposition of property serving as security for Agency loans. The proceeds from the disposition of the security property will be used for purposes approved by the Agency.

§ 3560.408 Lease of security property.

(a) *General.* Borrowers must obtain Agency approval prior to entering into a lease agreement related to any property serving as security for Agency loans. An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can give lease approval for real property serving as security for Agency loans.

(b) *Leases to public housing authorities.* Borrowers may not lease all or part of their housing facilities to a housing authority. Lease agreements in place prior to the effective date of this regulation may be continued provided that leases are in a form acceptable to the housing authority and are on terms that will enable the borrower to comply with Agency program requirements, to meet Agency program objectives, and make loan and other required payments to the Agency on an Agency approved schedule.

(c) *Lease of a portion of the security property.* The Agency may, subject to the applicable provisions governing loan purposes found in of §3560.53, §3560.553 and §3560.603, approve the leasing of facilities related to a housing project (e.g., central kitchens, recreation facilities, laundry rooms, and community rooms) when the borrower will continue to operate the facilities for the purposes for which the loan was made. Agency approval is not required for leases with a term of less than 30 days. The Agency will only approve a lease with a term over 30 days if the following conditions are met:

(1) The lease is in the best interest of the borrower, the tenants, and the Federal Government.

(2) The amount of the consideration agreed to in the lease is adequate to pay all prorated operating and maintenance expenses, a prorated share of the annual reserve deposit, and the prorated part of the loan amortization at the note rate of interest.

(3) All compensation and considerations, whether payments, a share of proceeds, or improvements to the property paid for by the lessee, must be disclosed to the Agency. No payments or compensation for entering into a lease shall flow to the borrower or any identity-of-interest related to the borrower.

(4) The lease provides at its termination for the restoration of the leased space to its original condition or a condition acceptable to the owner and the Federal Government.

(5) Consent to the lease will not exceed 3 years at a time unless the Agency determines that a longer lease is advantageous to the borrower, the tenants, and the Federal Government.

(6) When another lienholder's mortgage requires that lienholder's consent to a lease, the borrower must obtain written consent from the lienholder before the Agency will consider approving the lease.

(d) *Mineral leases.* Mineral leases will be handled according to 7 CFR 3550.159 except that all references to County Supervisor will be construed to mean District Director when applied to the MFH Programs.

§ 3560.409 Subordinations or junior liens against security property.

(a) *General.* Borrowers must obtain Agency consent prior to entering into any financial transaction that will require a subordination of the Agency security interest in the property (i.e., granting of a prior interest to another lender.) An environmental review must be completed in accordance with 7 CFR part 1940, subpart G, before the Agency can consent to a subordination or junior lien against the property. Borrowers must use an Agency approved subordination agreement.

(1) If a lien is placed against property serving as security for an Agency loan without prior Agency consent, the Agency will declare the borrower to be in default and will pursue liquidation of the borrower's loans in accordance with the procedures specified in §3560.457, unless an agreement can be reached between the borrower and the Agency to work out removal of the lien or post approve the lien.

(2) Subordinations or junior liens need not encompass the entire site, (e.g., a subordination or junior lien requested to permit an interim lender to advance construction funds may only cover the portion of the site proposed for construction.)

(3) The subordination or junior lien must be for a specific amount.

(4) The subordination or junior lien must not adversely impact the Agency's ability to service the loan according to the requirements of this part.

(b) *Consent request requirements.* Borrowers proposing to have the Agency subordinate its interest to another lender or to give a creditor a junior lien against property serving as security for an Agency loan must submit a consent request to the Agency. The