

RD AN No. 3941 (1980-D)
February 17, 2004

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Guaranteed Loan Specialists,
Rural Development Managers, and
Community Development Managers

FROM: Arthur A. Garcia
Administrator
Rural Housing Service

SUBJECT: Single Family Guaranteed Rural Housing Loan Program
Acceptable Liquidation Fees and Costs

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to reissue the guidelines regarding reimbursement of attorney and trustee fees incurred for liquidated single family housing loans guaranteed by the Rural Housing Service (RHS).

COMPARISON WITH PREVIOUS AN:

This AN replaces expired AN 3815 (1980-D), "Single Family Guaranteed Rural Housing Loan Program Acceptable Liquidation Fees and Costs," dated January 8, 2003. Standard attorney fees for foreclosures in New York and Pennsylvania have decreased.

BACKGROUND:

RHS regulations authorize the reimbursement of liquidation fees and costs that are actually paid by the lender for liquidated loans that result in a loss to the lender within the limits of the guarantee. RD Instruction 1980-D, §1980.374(c) states that the Agency will allow "reasonable" liquidation costs similar to those charged for like services in the area.

EXPIRATION DATE:
February 28, 2005

FILING INSTRUCTIONS:
Preceding RD Instruction 1980-D

RHS has reviewed charges for like services allowed by FannieMae, Freddie Mac, the Federal Housing Administration (FHA), and the Department of Veteran's Affairs (VA) to determine reasonableness. The attorney fee schedules established by each entity lists an acceptable flat rate fee that is eligible for reimbursement for legal services performed by private industry attorneys and trustees. In 1994, FHA began utilizing Fannie Mae's Schedule of Standard Attorney/Trustee's Fees until FHA established its own fee schedule in September 1998. RHS will continue to use the Schedule of Standard Attorney/Trustee's Fees published by Fannie Mae for foreclosure, bankruptcy and deed-in-lieu of foreclosure as a reasonable standard for claim reimbursement of liquidation costs.

IMPLEMENTATION RESPONSIBILITIES:

It is not the Agency's intent to regulate the amounts that lenders pay for services performed but to limit the extent to which RHS reimburses the lender for attorney fees incurred. RHS will use FannieMae's current Schedule of Standard Attorney/Trustee's Fees as the basis for determining reasonable and customary attorney fees. The Schedule of Standard Attorney/Trustee's Fees became effective for all RHS loans where the first legal action required initiating foreclosure; the petition for bankruptcy release, or the date the deed-in-lieu of foreclosure is executed is on or after February 1, 2003. Fees in several States decreased in 2003 and the updated schedule is attached (Attachment 1). Fees higher than the published amounts may be appropriate, in cases such as contested foreclosures, required probate procedures, etc., and are subject to approval by the State Offices on a case-by-case basis. Justification for higher fees must be documented in the file.

It is important to make the distinction between attorney/trustee fees and attorney/trustee costs. Typically, the fee for the service performed by the attorney is listed separately on the attorney invoice from the actual costs involved in the liquidation proceedings. A complete list of allowable liquidation costs would not be practical since procedural requirements vary by jurisdiction. Generally, RHS will reimburse a lender for costs, which must be paid to public officials such as sheriffs, clerks of court or recorders of deeds, as well as costs, which are required by law (i.e., private service of process and required publications).

RD Instruction 1980-D, §1980.374(c) states that in-house expenses of the lender will not be allowed during the liquidation process. Employee salaries, staff attorneys and overhead charges are considered examples of in-house expenses. Overhead expenses include, but are not limited to, items such as telephone calls, photocopying charges, overnight mail fees and postage (not including certified or registered mailings required by law). Typical overhead costs are inherent to the foreclosure process and payment of these expenses is not reimbursable.

Outsourcing of services, such as document preparation services, are customary in the industry and are also considered as attorney overhead. These fees are allowed as a separate expense *only* if the attorney fee is reduced in a proportionate amount to the document preparation fee that is charged.

Example:

- State = Tennessee
- Acceptable Foreclosure Attorney Fee = \$550
 - \$425 Attorney fee invoiced
 - \$125 Outsourced Document Preparation Fee
 - \$550 Total of fees charged

In the above example, the foreclosure attorney has chosen to outsource a portion of his service to a contractor. The total fee charged to the lender is the same as if the attorney firm had performed this function. This is considered an acceptable fee that is eligible for reimbursement.

If a foreclosure proceeding is interrupted due to a bankruptcy filed by the borrower, or if a deed-in-lieu of foreclosure or pre-foreclosure sale is accepted prior to the completion of the foreclosure, a maximum of 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed. If state statute requires that the foreclosure be restarted from the beginning after a bankruptcy is dismissed or relief from stay is granted, the lender will be reimbursed for 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted. If state statute does not require that the foreclosure be restarted from the beginning, reimbursement of all foreclosure attorney fees incurred both before and after the bankruptcy is limited to the amount listed on the Schedule of Standard Attorney/Trustee's Fees.

The Agency will not reimburse any attorney fees or costs incurred for a prior liquidation action that has been reinstated by the borrower or for which the foreclosed property is redeemed. Attorney fees and costs should be included in the amount collected from the borrower with the reinstatement or foreclosure redemption.

The foreclosure fees in Attachment 1 list the attorney or trustee fee limits allowed for each RHS recommended method of foreclosure listed in RD AN No. 3935, "Single Family Guaranteed Rural Housing Acceptable Foreclosure Time Frames." In States where more than one foreclosure method is available, the limits listed are based on the method that is most cost effective in reducing legal fees and interest expense. The Agency does not intend to prohibit the payment of attorney fees and costs where the lender obtains title through a method of foreclosure other than what is recommended. However, the State Offices or designee must determine whether the foreclosure method chosen by the lender was in the best interest of the government. For example, the recommended foreclosure method in some states is non-judicial, however, judicial foreclosures are required to preserve the rights of a deficiency judgment. If the lender can demonstrate that the recovery of a deficiency judgment is expected, the foreclosure method should be considered acceptable and reasonable attorney fees and costs reimbursed within the limits of the guarantee.

Each Rural Development State Office is responsible for notifying state-approved lenders of the revised attorney/trustee's fee schedule prior to March 1, 2004, by a letter similar to Attachment 2. The National Office will advise nationally approved lenders concurrent with the issuance of this AN using Attachment 2. Copies of the AN can also be obtained at the Rural Development web site, http://rdinit.usda.gov/regs/an_list.html.

In addition, during lender compliance reviews, files should be reviewed in an effort to ensure that lenders are complying with the fee limit requirements. Lenders that are determined to be out of compliance should be counseled on the provisions of the regulations and monitored closely for future compliance.

Questions about this AN may be directed to Susanne Wilson of the Single Family Housing Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Avenue, SW, STOP 0784, Washington, DC 20250-0784. The telephone number is (202) 720-1452.

Attachments

Schedule of Standard Attorney/Trustee's Fees

State	Foreclosure	Deed- In- Lieu	Bankruptcy Fees	
			Chapter 7	Chapter 13
AL	\$550	\$350	\$650	\$1,000
AK	\$1,200	\$350	\$650	\$1,000
AR	\$600	\$350	\$650	\$1,000
AZ	\$625	\$350	\$650	\$1,000
CA	\$600	\$350	\$650	\$1,000
CO	\$800	\$350	\$650	\$1,000
CT	\$1,200	\$350	\$650	\$1,000
DE	\$950	\$350	\$650	\$1,000
FL	\$1,200	\$350	\$650	\$1,000
GA	\$600	\$350	\$650	\$1,000
GU	\$1,200	\$350	\$650	\$1,000
HI	\$1,000	\$350	\$650	\$1,000
ID	\$600	\$350	\$650	\$1,000
IL	\$1,100	\$350	\$650	\$1,000
IN	\$1,000	\$350	\$650	\$1,000
IA	\$850	\$350	\$650	\$1,000
KS	\$850	\$350	\$650	\$1,000
KY	\$1,100	\$350	\$650	\$1,000
LA	\$900	\$350	\$650	\$1,000
ME	\$1,250	\$350	\$650	\$1,000
MD	\$800	\$350	\$650	\$1,000
MA	\$1,250	\$350	\$650	\$1,000
MI	\$650	\$350	\$650	\$1,000
MN	\$650	\$350	\$650	\$1,000
MS	\$550	\$350	\$650	\$1,000
MO	\$650	\$350	\$650	\$1,000
MT	\$600	\$350	\$650	\$1,000
NE	\$850	\$350	\$650	\$1,000
NV	\$600	\$350	\$650	\$1,000
NH	\$900	\$350	\$650	\$1,000
NJ	\$1,300	\$350	\$650	\$1,000
NM	\$900	\$350	\$650	\$1,000
NY	\$1,200*	\$350	\$650	\$1,000
NC	\$550	\$350	\$650	\$1,000
ND	\$900	\$350	\$650	\$1,000
OH	\$1,100	\$350	\$650	\$1,000
OK	\$900	\$350	\$650	\$1,000
OR	\$675	\$350	\$650	\$1,000
PA	\$1,200*	\$350	\$650	\$1,000
PR	\$1,100	\$350	\$650	\$1,000
RI	\$900	\$350	\$650	\$1,000

State	Foreclosure	Deed- In- Lieu	Bankruptcy Fees	
			Chapter 7	Chapter 13
SC	\$800	\$350	\$650	\$1,000
SD	\$850	\$350	\$650	\$1,000
TN	\$550	\$350	\$650	\$1,000
TX	\$550	\$350	\$650	\$1,000
UT	\$600	\$350	\$650	\$1,000
VT	\$950	\$350	\$650	\$1,000
VA	\$600	\$350	\$650	\$1,000
VI	\$1,100	\$350	\$650	\$1,000
WA	\$675	\$350	\$650	\$1,000
WV	\$550	\$350	\$650	\$1,000
WI	\$1,100	\$350	\$650	\$1,000
WY	\$600	\$350	\$650	\$1,000

* Note – New York and Pennsylvania standard attorney fees for foreclosure decreased in Fannie Mae’s revised *Chapter 1, Exhibit 3: Attorney’s and Trustee’s Fees*, dated 1/31/03. RHS fee changes under this AN are effective as of March 1, 2004.

TO: Nationally Approved SF-GRH Lenders

ATTENTION: Servicing and Loss Claim Managers

SUBJECT: Single Family Guaranteed Rural Housing Loan Program
Acceptable Liquidation Fees and Costs

Rural Housing Service regulations authorize the reimbursement of liquidation fees and costs that are actually paid by the lender for liquidated loans that result in a loss to the lender within the limits of the guarantee. Section 1980.374(c) of 7 C.F.R. states that the Agency will allow “reasonable” liquidation costs similar to those charged for like services in the area. Consistent with the first publication of the fee schedule, RHS has determined that it will continue to use the *Schedule of Standard Attorney/Trustee's Fees* published by FannieMae for foreclosure, bankruptcy and deed-in-lieu of foreclosure as a reasonable standard for claim reimbursement. The Agency is revising the schedule for reasonable attorney fees, which was made available for the first time in January 2003. These changes are effective as of March 1, 2004.

It is not the Agency’s intent to regulate the amounts that lenders pay for services performed but to limit the extent to which RHS will reimburse the lender for attorney fees incurred. RHS will use FannieMae’s current Schedule of Standard Attorney/Trustee's Fees as the basis for determining reasonable and customary attorney fees. The Schedule of Standard Attorney/Trustee’s Fees became effective for all RHS loans where the first legal action required initiating foreclosure; the petition for bankruptcy release or the date the deed-in-lieu is executed was on or after February 1, 2003. Fees higher than the published amounts may be appropriate in certain cases such as contested foreclosures, required probate procedures, etc., and are subject to approval by the State Offices or designee on a case-by-case basis.

It is important to make the distinction between attorney/trustee fees and attorney/trustee costs. Typically, the fee for the service performed by the attorney is listed separately on the attorney invoice from the actual costs involved in the liquidation proceedings. A complete list of allowable liquidation costs would not be practical since procedural requirements vary by jurisdiction. Generally, RHS may reimburse a lender for costs, which must be paid to public officials such as sheriffs, clerks of court or recorders of deeds, as well as costs, which are required by law (i.e., private service of process and required publications).

Section 1980.374(c) of 7 C.F.R. states that in-house expenses of the lender will not be allowed during the liquidation process. Employee salaries, staff attorneys and overhead charges are considered examples of in-house expenses. Overhead expenses include, but are not limited to, items such as telephone calls, photocopying charges, overnight mail fees and postage (not including certified or registered mailings required by law). Typical overhead costs are inherent to the foreclosure process and payment of these expenses is not reimbursable.

Outsourcing of services, such as document preparation services, are becoming customary in the industry and are also considered as attorney overhead. These fees are allowed as a separate expense *only* if the attorney fee is reduced in a proportionate amount to the document preparation fee that is charged.

Example:

- State = Tennessee
- Acceptable Foreclosure Attorney Fee = \$550
\$425 Attorney fee invoiced
\$125 Outsourced Document Preparation Fee
\$550 Total of fees charged

In the above example, the foreclosure attorney has chosen to outsource a portion of his service to a contractor. The total fee charged to the lender is the same as if the attorney firm had performed this function themselves. This is considered an acceptable fee that is eligible for reimbursement.

If a foreclosure proceeding is interrupted due to a bankruptcy filed by the borrower, or if a deed-in-lieu of foreclosure or pre-foreclosure sale is accepted prior to the completion of the foreclosure, a maximum of 75% of the allowable attorney fee and all actual foreclosure costs incurred will be reimbursed. If State statute requires that the foreclosure be restarted from the beginning after a bankruptcy is dismissed or relief from stay is granted, the lender will be reimbursed for 100% of allowable foreclosure attorney fees and costs incurred after the bankruptcy stay is lifted. If State statute does not require that the foreclosure be restarted from the beginning, reimbursement of all foreclosure attorney fees incurred both before and after the bankruptcy is limited to the amount listed on the Schedule of Standard Attorney/Trustee's Fees.

The Agency will not reimburse any attorney fees or costs incurred for a prior liquidation action that has been reinstated by the borrower or for which the foreclosed property is redeemed. Attorney fees and costs should be included in the amount collected from the borrower with the reinstatement or foreclosure redemption.

The foreclosure fees in Attachment 1 list the attorney or trustee fee limits allowed for each RHS recommended method of foreclosure listed in RD AN No. 3935, "Single Family Guaranteed Rural Housing Acceptable Foreclosure Time Frames." In States where more than one foreclosure method is available, the limits listed are based on the method that is most cost effective in reducing legal fees and interest expense. The Agency does not intend to prohibit the payment of attorney fees and costs where the lender obtains title through a method of foreclosure other than what is recommended. However, the State Offices or designee must determine whether the foreclosure method chosen by the lender was in the best interest of the government. For example, the recommended foreclosure method in some States is non-judicial, however, judicial foreclosures are required to preserve the rights of a deficiency judgment. If the lender can demonstrate that the recovery of a deficiency judgment is expected, the foreclosure method should be considered acceptable and the attorney fees and costs reimbursed within the limits of the guarantee.

Questions about this AN may be directed to Susanne Wilson of the Single Family Housing Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Avenue, SW, Washington, DC 20250-0784. The telephone number is (202) 720-1452.

Attachment