

PART 1927 - TITLE CLEARANCE AND LOAN CLOSING

Subpart B - Real Estate Title Clearance and Loan Closing

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PART 1927 - TITLE CLEARANCE AND LOAN CLOSING

Subpart B - Real Estate Title Clearance and Loan Closing

§1927.51 General.

(a) Types of loans covered by this subpart. This subpart sets forth the authorities, policies, and procedures for real estate title clearance and closing of loans, assumptions, voluntary conveyances and credit sales in connection with the following types of Rural Housing Service (RHS) and Farm Service Agency (FSA) loans: Farm Ownership (FO), Nonfarm Enterprise (FO-NFE), Emergency (EM), Operating (OL), Rural Housing (RH), Farm Labor Housing (LH), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Soil and Water (SW), Indian Land acquisition loans involving nontrust property, and NonProgram (NP) loans. This subpart does not apply to guaranteed loans.

(b) Programs not covered by this subpart. Title clearance and closing for all other types of agency loans and assumptions will be handled as provided in the applicable program instructions or as provided in special authorizations from the National Office.

(c) Review by the Office of the General Counsel (OGC). When required by applicable program regulations, such as for Multi-Family Housing (MFH) organizations or other complex cases as determined by the State Office, the State Office will request OGC to review the docket and issue closing instructions.

(d) Agency forms. Copies of all agency forms referenced in this regulation and the agency's internal administrative procedures for title clearance and loan closing are available upon request from the agency's State Office. Forms and title clearance and loan closing requirements which are specific for any individual state must be obtained from the agency State Office for that state.

§1927.52 Definitions.

Agency. The Rural Housing Service (RHS) and Farm Service Agency (FSA) and their successor agencies.

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Real Property
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Loan Closing

Approval official. The agency employee who has been delegated the authority to approve, close, and service the particular kind of loan will approve an attorney or title company as closing agent for the loans. If a loan must be approved at a higher level, the initiating office may approve the closing agent.

Approved attorney. A duly licensed attorney, approved by the agency, who provides title opinions directly to the agency and the borrower or upon whose certification of title an approved title insurance company issues a policy of title insurance. Approved attorneys also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. Approved attorney is further defined in §1927.54(c).

Approved title insurance company. A title insurance company, approved by the agency, (including its local representatives, employees, agents, and attorneys) that issues a policy of title insurance. Depending on the local practice, an approved title insurance company may also close loans, assumptions, credit sales, and voluntary conveyances and disburse funds in connection with agency loans. If the approved title insurance company does not close the loan itself, the loan closing functions may be performed by approved attorneys or closing agents authorized by the approved title insurance company.

Borrower. The party indebted to the agency after the loan, assumption, or credit sale is closed.

Certificate of title. A certified statement as to land ownership, based upon examination of record title.

Closed loan. A loan is considered to be closed when the mortgage is filed for record and the appropriate lien has been obtained.

Closing agent. The approved attorney or title company selected by the applicant and approved by the agency to provide closing services for the proposed loan. Unless a title insurance company also provides loan closing services, the term "title company" does not include "title insurance company."

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Closing protection letter. An agreement issued by an approved title insurance company which is an American Land Title Association (ALTA) form closing protection letter or which is otherwise acceptable to the agency and which protects the agency against damage, loss, fraud, theft, or injury as a result of negligence by the issuing agent, approved attorney, or title company when title clearance is done by means of a policy of title insurance. Depending on the area, closing protection letters may also be known as "Insured Closing Letters," "Indemnification Agreements," "Insured Closing Service Agreements," or "Statements of Settlement Service Responsibilities."

Cosigner. A party who joins in the execution of a promissory note or assumption agreement to guarantee repayment of the debt.

Credit sale. A sale in which the agency provides credit to the purchasers of agency inventory property. Title clearance and closing of a credit sale are the same as for an initial loan, except the property is conveyed by quitclaim deed.

Deed of trust. See trust deed.

Exceptions. Exceptions include, but are not limited to, recorded covenants; conditions; restrictions; reservations; liens; encumbrances; easements; taxes and assessments; rights-of-way; leases; mineral, oil, gas, and geothermal rights (with or without the right of surface entry); timber and water rights; judgments; pending court proceedings in Federal and State courts (including bankruptcy); probate proceedings; and agreements which limit or affect the title to the property.

Fee simple. An estate in land of which the owner has unqualified ownership and power of disposition.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture (and any successor agency). FSA is the successor agency for farm program loans of the former Farmers Home Administration.

General warranty deed. A deed containing express covenants by the grantor or seller as to good title and right to possession.

Indemnification agreement. An agreement that protects agency against damage, loss, fraud, theft, or injury as a result of useful conduct or negligence on behalf of the issuing agent, approved attorney, or title company. This agreement may also be entitled closing protection letter, insured closing letter, insured closing service agreement, statement of settlement service responsibilities, or letters which provide similar protection.

Issuing agent. An individual or entity who is authorized to issue title insurance for an approved title insurance company.

Land purchase contract (contract for deed). An agreement between the buyer and seller of land in which the buyer has the right to possession and use of the land over a period of time (usually in excess of 1 year) and makes periodic payments of a portion of the purchase price to the seller. The seller retains legal title to the property until the final payment is made, at which time the buyer will receive a deed to the land vesting fee title in the buyer.

Mortgage. Real estate security instrument which pledges land as security for the performance of an obligation such as repayment of a loan. For the purpose of this regulation the term "mortgage" includes deed of trust and deed to secure debt. Form RD 1927-7 (State), "Real Estate Mortgage or Deed of Trust for _____ (Rural Housing)," will be used to secure a mortgage to the agency.

National Office. The National Headquarters Office of FSA or RHS depending on the loan program involved.

OGC. The Office of the General Counsel, United States Department of Agriculture.

Program regulations. The agency regulations for the particular loan program involved (e.g., 7 CFR part 3550 for single family housing (SFH) loans). (Revised 01-23-03, SPECIAL PN.)

Quitclaim deed. A transfer of the seller's interest in the title, without warranties or covenants. This type of deed is used by the agency to convey title to purchasers of inventory property.

RHS. The Rural Housing Service, an agency of the United States Department of Agriculture, or its successor agency. RHS is the successor agency to the Rural Housing and Community Development Service (RHCD) which was, in turn, the successor agency to the Farmers Home Administration.

Seller. Individual or other entity which convey ownership in real property to an applicant for an agency loan or to the agency itself.

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Special warranty deed. A deed containing a covenant whereby the grantor agrees to protect the grantee against any claims arising during the grantor's period of ownership.

State Office. For FSA, this term refers to the FSA State Office. For RHS, this term refers to the Rural Development State Director.
(Revised 01-23-03, SPECIAL PN.)

Title clearance. Examination of a title and its exceptions to assure the agency that the loan is legally secured and has the required priority.

Title company. A company that may abstract title, act as an issuing agent of title insurance for a title insurance company, act as a loan closing agent, and perform other duties associated with real estate title clearance and loan closing.

Title defects. Any exception or legal claim of ownership (through deed, lien, judgment, or other recorded document), on behalf of a third party, which would prevent the seller from conveying a marketable title to the entire property.

Trust deed. A three party security instrument conveying title to land as security for the performance of an obligation, such as the repayment of a loan. For the purpose of this regulation a trust deed is covered by the term "mortgage." A trust deed is the same as a deed of trust.

Voluntary conveyance. A method of liquidation by which title to agency security is transferred by a borrower to the agency by deed in lieu of foreclosure.

Warranty deed. A deed in which the grantor warrants that he or she has the right to convey the property, the title is free from encumbrances, and the grantor shall take further action necessary to perfect or defend the title.

§ 1927.53 Costs of title clearance and closing of transactions.

The borrower or the seller, or both, in compliance with the terms of the sales contract or option will be responsible for payment of all costs of title clearance and closing of the transaction and will arrange for payment before the transaction is closed. In voluntary conveyance cases to the agency, these costs will be paid as provided in 7 CFR part 3550, subpart E.

In a case involving the purchase or sale of real estate, the option or sales contract must state who will pay the title clearance and closing costs. These costs will include any costs of abstracts of title, land surveys, attorney's fees, owner's and lender's policies of title insurance, obtaining curative material, notary fees, documentary stamps, recording costs, tax monitoring service, and other expenses necessary to complete the transaction. (Revised 01-23-03, SPECIAL PN.)

§ 1927.54 Requirements for closing agents.

(a) Form of title certification. State Offices are directed to require title insurance for all loan closings unless the agency determines that the use of title insurance is not available or is economically not feasible for the type of loan involved or the area of the state where the loan will be closed. If title insurance is used, State Offices are authorized to require a closing protection letter issued by an approved title insurance company to cover the closing agent, if available. A closing protection letter need not be furnished when the closing is conducted by the title insurance company. When a closing protection letter is provided, Form RD 1927-20, "Certification of Title Insurance Company," is not required. The State Office's determination to require the use of title insurance will be based on the commercial and residential loan closing practices of the State and the economic and legal feasibility of obtaining title insurance. The State Office may also determine if a title insurance policy survey coverage is an acceptable substitute for a survey.

(b) Approval of closing agent. An attorney or title company may act as a closing agent and close agency real estate loans, provide necessary title clearance, and perform such other duties as required in this subpart. A closing agent will be responsible for closing agency loans and disbursing both agency loan funds and funds provided by the borrower in connection with the agency loan so as to obtain title and security position as required by the agency. The closing agent must be covered by a fidelity bond which will protect the agency unless a closing protection letter is provided to the agency. The borrower will select the approved closing agent. Agency employees will not recommend the use of any particular closing agent or title insurance company, although as provided in paragraph (a) of this section the borrower may be required by a State Supplement to provide title clearance with either a title insurance policy or an attorney's opinion. If title clearance is by an attorney's opinion, the approval official will approve the attorney who will perform the closing in accordance with paragraph (c) of this section. The attorney will be approved after submitting Form RD 1927-19, "Certification of Attorney." If title certification is by

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§1927.54(b) (Con.)

means of a policy of title insurance, the title company which will issue the policy must have been approved in accordance with paragraph (d) of this section. A closing agent's delay in providing services without justification, in connection with agency loans, may be a basis for not approving the closing agent in future cases.

(c) Approval of attorneys. Any attorney selected by an applicant, who will be providing title clearance where the certificate of title will be an attorney's opinion, must submit a completed Form RD 1927-19 certifying to professional liability insurance coverage. If the attorney is also the closing agent, fidelity coverage for the attorney and any employee having access to the funds must be provided. The State Office will determine the appropriate level of such insurance. Required insurance will, as a minimum, cover the amount of the loan to be closed. The State Office will approve the form stipulating the bond coverage. The approval official will approve any attorney who is duly licensed to practice law in the state where the real estate security is located and who complies with the bonding and insurance requirements in this section. If the certification of title will be by means of title insurance, any attorney or closing agent designated as an approved attorney or closing agent by the approved title insurance company which will issue the policy of title insurance will be acceptable, and when covered by a closing protection letter, will not be required to obtain professional liability insurance or a fidelity bond, if the closing protection letter is the ALTA form closing protection letter or provides at least equivalent protection to the agency. Each approved title insurance company may provide a master list of their approved attorneys that are covered by its closing protection letters to the State Office and, in such cases the attorneys are approved for closings for that insurance company. Delay in providing closing services without justification may be a basis for not approving the attorney in future cases.

(d) Approval of title companies. A title company acting as a closing agent, or as an issuing agent for a title insurance company, must be covered by a title insurance company closing protection letter or submit Form RD 1927-20, "Certification of Title Company," certifying to fidelity coverage to cover all employees having access to the loan funds. The State Office will determine the appropriate level of such coverage and will approve the form stipulating the bond coverage. Delay in providing closing services without justification may be a basis for not approving the company in future cases. Each approved title insurance company may provide a master list of their approved title companies that are covered by its closing protection letter to the State Office and, in such cases, the title companies on the list are approved for closings for that title insurance company.

(e) Approval of title insurance companies. State Offices are encouraged to solicit discounts on title insurance premiums from title insurance companies due to the high volume of agency loan transactions. The agency will approve any title insurance company which issues policies of title insurance in the State where the security property is located if:

(1) The form of the owner's and lender's policies of title insurance (including required endorsements) to be used in closing agency loans are acceptable to the State Office, and will contain only standard types of exceptions and exclusions approved in advance by the approval official with the advice of OGC;

(2) The title insurance company is licensed to do business in the State (if a license is required), and

(3) The title insurance company is regulated by a State Insurance Commission, or similar regulator, or if not, the title insurance company submits copies of audited financial statements, or other approved financial statements satisfactory to the State Office, which show that the company has the financial ability to cover losses arising out of its activities as a title insurance company and under any closing protection letters issued by the title insurance company. The financial statements must also demonstrate that the title insurance company has sufficient resources to reimburse the agency for any losses caused by fraud or dishonesty by the company and its authorized agents, or failure of the company or its authorized agents to follow or comply with agency's written closing instructions.

(4) Delay in providing services without justification may be a basis for not approving the company.

(5) A title insurance company is not regulated by the State, the above listed approval process will be repeated at least every 5 years, or more often if adverse information becomes available, to insure continued compliance by the title insurance company.

(f) Responsibility of approval official. In addition to approving closing agents, the approval official will inform all closing agents used in connection with agency closing of their duties and responsibilities under this subpart, applicable State Supplements, and any changes or additional requirements which may be imposed. A package containing a copy of this subpart, applicable forms, State Supplements, and other pertinent material will be provided to the closing agent as needed.

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(g) Conflict of interest. A closing agent who has, or whose spouse, children, or business associates have, a financial interest in the real estate which will secure the agency debt shall not be involved in the title clearance or loan closing process. Financial interest includes having either an equity, creditor, or debtor interest in any corporation, trust, or partnership with a financial interest in the real estate which will secure the agency debt.

(h) Debarment or suspension. No attorney, title company, title insurance company, or closing agent, currently debarred or suspended from participating in Federal programs, may participate in any aspect of the agency loan closing and title clearance process, in accordance with RD Instruction 1940-M.

(i) Special provisions. Closing agents are responsible for having current knowledge of the requirements of State laws in connection with loan closing and title clearance and should advise the State Office of any changes in State law which necessitate changes in the agency's State mortgage forms and State Supplements.

(j) Rejecting closing agents or title insurance companies. If the approval official (or the State Office for title insurance companies) cannot approve the closing agent selected by the applicant in accordance with paragraphs (c) or (d) of this section, the following actions will be taken:

(1) The attorney or closing agent will be notified within 5 business days of the specific reasons for rejection.

(2) The applicant will be notified within 5 business days of the rejection. It is the applicant's responsibility to decide whether to continue with the rejected closing agent or attorney, if the reasons for rejection can be removed before any legal costs are incurred, or if another closing agent or attorney will be selected.

(3) If a title insurance company has requested approval, the title insurance company will be notified within 30 days after all relevant information requested by the State Office in connection with the approval decision has been received. If the title insurance company is rejected, it will be notified at that time of the specific reasons for rejection.

§1927.55 Title clearance services.

(a) Responsibilities of closing agents. Services to be provided to the agency and the borrower by a closing agent in connection with the transaction vary depending on whether a title insurance policy or title opinion is being furnished. The closing agent is expected to perform these services without unnecessary delay.

(b) Initial responsibility of approval official. The approval official will furnish the closing agent with Form RD 1927-4, "Transmittal of Title Information," all the information and documents called for therein (including waivers, easements, and agency forms), and any information not contained in this subpart regarding agency policies and procedures applicable to the type of transaction involved.

(c) Ordering title services. The approval official will notify the borrower and seller, if applicable, that an attorney or title company must be employed to examine the title and perform other services in connection with the closing of the transaction. Application for title examination or insurance will be made by the borrower to a title company or attorney. The lender policy will be for at least the amount of the loan. The United States of America will be named as the insured lender. RD Guide Letter 1927-B-1 (available in any agency office), may be used to request attorney title examination, loan closing and related legal services.

(d) Use of title opinion. If a title opinion will be issued, a title examination will include searches of all relevant land title and other records, so as to express an opinion as to the title of the property and the steps necessary to obtain the appropriate title and security position to issue a title opinion as required by this subpart. A Form RD 1927-9, "Preliminary Title Opinion," Form RD 1927-10, "Final Title Opinion," or a certificate of title will be issued to the approval official. If either form is not legally sufficient in a particular State, an OGC approved State form will be used. The closing agent or approved attorney will determine:

- (1) The legal description and all owners of the real property;
- (2) Whether there are any exceptions affecting the property and advise the approval official and borrower of the nature and effect of outstanding interests or exceptions, prior sales of part of the property, judgments, or interests to assist in determining which exceptions must be corrected in order for the borrowers to obtain good and marketable title of record in accordance with prevailing title examination standards, and for the agency to obtain a valid lien of the required priority;

§1927.55(d) (Con.)

(3) Whether there are outstanding Federal, State, or local tax claims (including taxes which under State law may become a lien superior to a previously attaching mortgage lien) or homeowner's association assessment liens;

(4) Whether outstanding judgments of record, bankruptcy, insolvency, divorce, or probate proceedings involving any part of the property, whether already owned by the borrower, or to be acquired by assumption or with loan funds, or involving the borrower or the seller exist;

(5) If a water right is to be included in the security for the loan, and if so, the full legal description of the water right;

(6) In addition to paragraph(d)(2) of this section, if wetlands easements or other conservation easements have been placed on the property;

(7) What measures are required for preparing, obtaining, or approving curative material, conveyances, and security instruments, and

(8) That sufficient copies of these interests and exceptions are provided as requested by the approval official.

(e) Use of title insurance. When title insurance is to be obtained, the approval official will be furnished with a title insurance binder disclosing any defects in, exceptions to, and encumbrances against, the title, the conditions to be met to make the title insurable and in the condition required by the agency, and the curative or other actions to be taken before closing of the transaction. The binder must include a commitment to issue a lender policy in an amount at least equal the amount of the loan, except in instances where there may be an outstanding owner's policy in favor of the borrower. Notwithstanding the provisions of this section, the instances of an assumption without a subsequent loan, the existing policy may be continued if the coverage meets or exceeds the assumption balance and the title company agrees in writing to extend coverage in full force and effect.

(f) Approval official's responsibilities after receipt of preliminary title opinion or title insurance binder. Upon receipt of the preliminary title opinion or title insurance binder, the approval official will:

- (1) Check the opinion or binder carefully. If any required information is omitted, or if the standard form of opinion or binder is amended, return it for completion or correction. If the closing agent is unable or unwilling to comply, the approval official will send the opinion or binder with a full explanation to OGC through the State Office for advice.
- (2) Check the legal description of the land, water rights, rights-of-way, easements, and other security involved, to determine that the description covers all of the property rights intended to be taken as security.
- (3) Review all exceptions to title shown in the preliminary title opinion or title insurance binder. The approval official will determine which exceptions must be modified, eliminated, or waived, or whether an agreement with prior lienholders is necessary or advisable to protect the agency's interests. If prior encumbrance(s) will remain, the approval official should obtain and review a copy of each to insure that its terms are acceptable to the agency. If an option or sales contract which lists acceptable exceptions is involved, the approval official will determine whether the exceptions in the preliminary title opinion or title insurance binder are the same as those in the option or sales contract and inform the applicant of discrepancies. If the approval official has any doubt as to the acceptability or effect of any exception, the applicant will be requested to obtain a clarification. The approval official will consult with the closing agent and/or the State Office when necessary to determine the acceptability of any exception. If the approval official determines that any defects cannot be corrected, or the effect of certain exceptions on the title, suitability, security value, or successful operation of the property is not clear, and they cannot be corrected or eliminated without undue expense, the approval official will forward the preliminary title opinion or title insurance binder to the State Office together with comments regarding the objectionable features and copies of the exceptions when needed.

§ 1927.55(f)(3) (Con.)

(i) If, with the advice of OGC, the State Office determines that the exceptions will not adversely affect the title to the property or its suitability, security value, or successful operation, the State Office will advise the approval official. The approval official will then arrange for closing.

(ii) If the State Office, with the advice of OGC, finds that these exceptions will adversely affect the title to the property, its suitability, security value, or successful operation, the State Office may waive them conditionally and instruct the approval official as to how the conditions may be met, or instruct the approval official that the loan cannot be closed because of the defect.

§ 1927.56 Scheduling loan closing.

The approval official may arrange a closing when he or she determines that exceptions shown in the preliminary title opinion or title insurance binder (if any) will not adversely affect the suitability, security value, or successful operation of the property and all other agency conditions to closing have been satisfied.

(a) The approval official will make sure that all requirements of subpart I of part 1940 of this chapter have been met before the loan is closed.

(b) In arranging for loan closing, the approval official will send Form RD 1927-15, "Loan Closing Instructions and Loan Closing Statement," or Form RD 3550-25, "Loan Closing Instructions and Loan Closing Statement" to the closing agent. When a title insurance commitment is involved, the "loan closing instructions" will include any corrections required by the commitment. Therefore, the title insurance commitment must be received before the final closing instructions are transmitted. At the same time, send written notification of loan closing to the applicant. For SFH loans, Form RD 1927-16, "Notification of Loan Closing," will be used to notify the applicant. (Revised 08-18-04, PN 378.)

§ 1927.57 Preparation of closing documents.

(a) Preparation of deeds. The closing agent, unless prohibited by law, will prepare, complete, or approve documents, including deeds, necessary for title clearance and closing of the transaction and provide the agency with the policy of title insurance or final title opinion providing the lien priority required by the agency and subject only to exceptions approved by the agency. Form RD 1927-11, "Warranty Deed ()" (State), or Form RD 1927-12, "Warranty Deed" (State), will be used when required by this part.

(1) Types of estates for married borrowers. If the borrowers are married, the agency prefers, but will not require, that title to the real estate will be held in such a way that, upon the death of a borrower, it will pass to the surviving spouse by law to prevent the real estate from being tied up in probate proceedings. Title may be held in any manner that permits obtaining the required mortgage.

(2) Deeds will be prepared as follows. Conveyances of title to borrowers by parties other than the agency will be by the form of deed in use in the state where the property is located that the entity providing title clearance determines will vest in the borrower a good and marketable title of record. All conveyances by the agency will be by quitclaim deed.

(b) Preparation of mortgages. The closing agent will insure that all mortgages are properly prepared, completed, executed, and filed for record. Where applicable, the mortgages should recite that it is a purchase money mortgage. The following requirements will be observed in preparing agency mortgages:

(1) Real estate mortgage forms. Agency mortgage forms will be used. Form RD 1927-1 (State), "Real Estate Mortgage or Deed of Trust For _____," will be used for all direct loans except where Form RD 1927-7 (State), is used for all RH loans. These forms will be prepared and distributed in accordance with State Supplements. When a loan is made to a homestead entryman or to a contract purchaser of a farm unit from the Bureau of Reclamation, a rider to Form RD 1927-1 (State), will be used per State Supplement.

(2) Number of copies.

(i) The original recorded mortgage is to be retained in the borrower's case file unless the original mortgage is retained by the recorder, and a conformed copy will be provided to the borrower.

§1927.57(b) (2) (Con.)

(ii) When the original is to be retained by the recorder, an original and two conformed copies will be prepared. One conformed copy will be retained in the borrower's case file and one conformed copy will be provided to the borrower.

(iii) Extra copies of mortgages may be needed in individual cases in some participation loans, loans on reclamation projects, when security is taken on trust or restricted property involving loans to Native American, and other similar situations.

(iv) The closing agent will distribute copies to appropriate parties at loan closing or as soon as possible thereafter.

(3) Persons required to execute mortgage. The mortgage will be executed by all persons and entities the title insurance company or attorney providing the title opinion determines necessary (including, for example, any spouse with a right of dower or curtesy) for the title insurance policy or final title opinion to provide that the agency has the required lien priority so that, in the event of default, the mortgage will be enforced by the agency against all such interests.

(4) Date of execution. The mortgage will be dated and executed on the date the title insurance company or attorney providing the final title opinion determines is necessary to provide the agency with a title insurance policy or final title opinion showing the agency has required lien priority and is subject to exceptions approved by the agency.

(5) Title exceptions. The mortgage will generally or specifically describe all exceptions it will be subject to, depending on what is customary under local practice or required by State law or State Supplement.

(6) Releasing or retaining existing mortgages in refinancing cases. When there is an outstanding agency real estate mortgage against the property and the loan secured by the mortgage is being refinanced with the current loan, the mortgage for the outstanding loan will be superseded and will be released at the time of loan closing, unless it is necessary under State law to keep the existing mortgage in effect to retain a valid lien of the same priority for the obligation being refinanced.

(7) Describing notes in mortgages. In most cases, only the note(s) for the new loan(s) needs to be described when a subsequent loan is made and a subsequent mortgage is taken unless the title insurance company or attorney providing the final title opinion determines it necessary to describe existing agency notes in the subsequent mortgage.

(8) Determining due date of final installments. The "Due Date of Final Installment" as shown in the mortgage, is determined by adding the number of years over which the loan is payable to the date of the promissory note: for example, if the note is dated March 30, 1987, and the final payment is due and payable 20 years from that date, the "Due Date of Final Installment" is March 30, 2007.

(9) Alteration of mortgage form. An agency mortgage form may be altered pursuant to a State Supplement having prior approval of the National Office, or in a special case, to comply with the terms of loan approval prescribed in accordance with program instructions. No other alterations in the printed mortgage forms will be made without prior approval of the National Office. Any changes made by deletion, substitution, or addition (excluding filling in blanks) will be initialed in the margin by all persons signing the mortgage.

(10) Special requirements imposed by program instructions. Some program instructions require that the mortgage forms be modified. In such cases, either OGC or the approval official will modify the agency mortgage form as specified. The closing agent will make sure that the modification has been made prior to execution of the mortgage.

(11) Mortgages on leasehold estates. When the agency's security interest is a leasehold estate, unless State law or State Supplement otherwise provides, the Form RD 1927-1 (State) or Form RD 1927-7 (State) will be modified as follows:

(i) In the space provided on the mortgage for the description of the real property security, the leasehold estate and the land covered by the lease must be described. The following language must be used unless modified by a State Supplement:

§1927.57(b) (11) (i) (Con.)

"All of borrower's right, title, and interest in and to a leasehold estate for an original term of ___years, commencing on _____, 19 __, created and established by and between _____ as lessor and owner and _____ as lessee, including any extensions and renewals thereof, a copy of which lease was recorded or filed in book ____, page ____, as instrument number _____, in the Office of the (e.g., County Clerk), for the aforesaid county and State and covering the following real property: _____."

(ii) Immediately preceding the covenant starting with the words "should default," the following covenant will be added:

"() Borrower covenants and agrees to pay when due all rents and any and all other charges required by said lease, to comply with all other requirements of said lease, and not to surrender or relinquish, without the Government's prior written consent, any of borrower's right, title, or interest in or to said leasehold estate or under said lease while this mortgage remains of record."

(12) Mortgages on land purchase contract. When the agency security interest is on a borrower's interest in a land purchase contract, OGC will provide language used to modify the Form RD 1927-1 (State) or Form RD 1927-7 (State).

(13) Legal description. The legal description on the mortgage should be taken directly from the title insurance commitment or the title abstract to insure accuracy of the legal description.

(c) Preparation of the promissory note. The closing agent will make sure that Form RD 1940-16, "Promissory Note," for agency originated loans (or assumption agreement) is completed in accordance with the Forms Manual Insert (FMI) and executed. The approval official will determine who is to execute the promissory note, including cosigners, if necessary, in accordance with program instructions and provide the closing agent with the names of these individuals. If the applicant is a corporation, partnership, or trust, the approval official will provide the name(s) and title(s) of the individual(s) executing the promissory note on behalf of the entity. The closing agent will determine if any additional signatures are required on the promissory note or assumption agreement in order for the policy of title insurance or final title opinion to provide that the agency has the required lien priority subject only to exceptions approved by the agency.

(d) Preparation of protective instruments. The closing agent will properly prepare, complete, and approve releases and curative documents necessary for title clearance and closing, in recordable form and record them if required.

(1) Prior lienholder's agreement. If any liens (other than agency liens or tax liens to local governmental authorities) or security agreements (hereafter called "liens"), with priority over the agency's mortgage will remain against the real property securing the loan, the lienholders must execute, in recordable form, agreements containing all of the following provisions unless prior approval for different provisions has been obtained from the National Office:

(i) The prior lienholder shall agree not to declare the lien in default or accelerate the indebtedness secured by the prior lien for a specific period of time after notice to the agency. The agreement must:

(A) Provide that the specified period of time will not commence until the lienholder gives written notice of the borrower's default and the prior lienholder's intention to accelerate the indebtedness to the agency office servicing the loan,

(B) Include the address of the agency servicing office,

(C) Give the agency the option to cure any monetary default by paying the amount of the borrower's delinquent payments to the prior lienholder, or pay the obligation in full and have the lien assigned to the agency, and

(D) Provide that the prior lienholder will not declare the lien in default for any nonmonetary reason if the agency commences liquidation proceedings against the property and thereafter acquires the property.

§1927.57(d) (1) (Con.)

(ii) When the prior lien secures future advances, including the lienholder's costs for borrower liquidation or bankruptcy, which under State law have priority over the mortgage being taken (or an agency mortgage already held), the prior lienholder shall agree not to make advances for purposes other than taxes, insurance or payments on other prior liens without written consent of the agency.

(iii) The prior lienholder shall consent to the agency making (or transferring) the loan and taking (or retaining) the related mortgage if the prior lien instrument prohibits a loan or mortgage (or transfer) without the prior lienholder's consent.

(iv) The prior lienholder shall consent to the agency transferring the property subject to the prior lien after the agency has obtained title to the property either by foreclosure or voluntary conveyance if the prior lien instrument prohibits such transfer without the prior lienholder's consent.

(2) Notice of foreclosure agreements. These agreements will be obtained only when required by a State Supplement. As a precautionary measure, the State Supplement will require notice agreements when OGC determines that State law permits junior liens of private parties to be extinguished by foreclosure of a prior lien without the junior lienholder being made parties or being given actual notice. The State Supplement will specify the number of days within which notice of foreclosure is required by the agreement.

(3) Leaseholds. When the agency security interest is on a leasehold, the approval official must review the lease to make sure that it meets the security and duration requirements of the program instructions. If not, it will be necessary for the landlord and tenant to amend the lease to meet these requirements at closing.

(4) Agreement by holder of seller's interest under land purchase contract. If the buyer's interest in the security property is that of a buyer under a land purchase contract, it will be necessary for the seller to execute, in recordable form, an agreement containing all of the following provisions:

(i) The seller shall agree not to sell or voluntarily transfer the seller's interest under the land purchase contract without the prior written consent of the State Office.

(ii) The seller shall agree not to encumber or cause any liens to be levied against the property.

(iii) The seller shall agree not to commence or take any action to accelerate, forfeit, or foreclose the buyer's interest in the security property until a specified period of time after notifying the State Office of intent to do so. This period of time will be 90 days unless a State Supplement provides otherwise. The agreement shall give the agency the option to cure any monetary default by paying the amount of the buyer's delinquent payments to the seller, or paying the seller in full and having the contract assigned to the agency.

(iv) The seller shall consent to the agency making the loan and taking a security interest in the borrower's interest under the land purchase contract as security for the agency loan.

(v) The seller shall agree not to take any actions to foreclose or forfeit the interest of the buyer under the land purchase contract because the agency has acquired the buyer's interest under the land purchase contract by foreclosure or voluntary conveyance, or because the agency has subsequently sold or assigned the buyer's interest to a third party who will assume the buyer's obligations under the land purchase contract.

(vi) When the agency acquires a buyer's interest under a land purchase contract by foreclosure or deed in lieu of foreclosure, the agency will not be deemed to have assumed any of the buyer's obligations under the contract, provided that the failure of the agency to perform any such obligations while it holds the buyer's interest is a ground to commence an action to terminate the land purchase contract.

(5) Form of agreement. The form of prior lienholder's agreement, forbearance agreement, notice of foreclosure or assignment, and agreement by holder of seller's interest under land purchase contract will be prescribed in a State Supplement with the concurrence of OGC. When only forbearance agreements are needed, they will be obtained on Form RD 1927-8, "Agreement with Prior Lienholder," or, if that form is not legally satisfactory, on a State form having the same title. When only notice of foreclosure or assignment are required, a separate form for this purpose will be used. When both forbearance agreements and notices of foreclosure or assignment are required, Form RD 1927-8 may be amended in order to serve both purposes, a substitute State form may be used for both purposes, or Form RD 1927-8 may be used and the notice agreement obtained on a separate State form.

§1927.57(d) (Con.)

(6) Executing, acknowledging, and recording. When an agreement is required by paragraph (d) (1), (d) (2), (d) (3), or (d) (4) of this section, the closing agent will determine at the time of closing that the agreement is properly completed, executed, sealed, witnessed, acknowledged, and recorded as required by State law or State Supplement.

(e) Correction of errors in recorded security instruments. A State Supplement, subject to OGC's review and approval, will be issued to provide guidance in correcting error(s) in recorded security instruments.

§1927.58 Closing the transaction.

The closing agent will cooperate with the approval official, borrower, seller, and other necessary parties to arrange the time and place of closing. The transaction may be closed when the agency determines the agency requirements for the loan have been satisfied and the closing agent or approved attorney can issue or cause to be issued a policy of title insurance or final title opinion as of the date of closing showing title vested as required by the agency, the lien of the agency's mortgage in the priority required by the agency, and title to the mortgaged property subject only to those exceptions approved in writing by the agency. The loan will be considered closed when the mortgage is filed for record and the required lien is obtained.

(a) Disbursement of loan funds. When the closing agent indicates that the conditions necessary to close the loan have been met, loan funds will be forwarded to the closing agent. Loan funds will not be disbursed prior to filing of the mortgage for record; however, when necessary, loan funds may be placed in escrow before the mortgage is filed for record and disbursed after it is filed. No development funds will be kept in escrow by the closing agent after loan closing, unless approved by the agency. Loan funds for the payment of a lien may be disbursed only upon the recording of a discharge, satisfaction, or release of prior lien interests (or assignment where necessary to protect the interests of the agency).

(b) Title examination and liens or claims against borrowers. If there are other exceptions or recorded items which have arisen since the preliminary title opinion, the transaction will not be closed until these entries have been cleared of record or approved, by the agency. The closing agent will advise the approval official of the nature of such intervening instruments and the effect they may have on obtaining a valid mortgage of the priority required or the title insurance policy to be issued.

(c) Taxes and assessments. The closing agent will determine if all taxes and assessments against the property which are due and payable are paid at or before the time of loan closing. If the seller and the borrower have agreed to prorate any taxes or assessments which are not yet due and payable for the year in which the closing of the transaction takes place, the seller's proportionate share of the taxes and assessments will be deducted from the proceeds to be paid to seller at closing and will be added to the amount required to be paid by borrower at closing. Certificates or receipts should be produced from the taxing authorities to show that taxes or assessments which are due and payable have been paid and, if possible, the certificates or receipts, or copies, will be kept in the borrower's County or District Office case file. Appropriate prorations as agreed upon between the borrower and seller may also be made for taxes paid by the seller which are applicable to a period after the closing date, and for common area maintenance fees, prepaid rentals, insurance (unless the borrower is to obtain a new policy of insurance), and growing crops.

(d) Affidavit regarding work of improvement.

(1) Execution by borrower. If required by State Supplement, the closing agent will require that a Form RD 1927-5, "Affidavit Regarding Work of Improvement," be completed and executed when a loan is being made to a borrower who already owns the real estate to be mortgaged. This affidavit will be executed by the borrower at closing.

(2) Execution by seller. If required by State Supplement, the closing agent will require that Form RD 1927-5 be completed and executed by the seller when the agency is making a loan to a borrower to enable the borrower to acquire the property (including transfers). This affidavit will be executed by the seller at closing.

(3) Legal insufficiency of affidavit form. If Form RD 1927-5 is not legally sufficient in a particular State, a State form approved by OGC will be used. A similar form that may be required by a title insurance company may be substituted for Form RD 1927-5.

(4) Recording. The affidavit will not be recorded unless the closing agent deems it necessary and State law permits.

§ 1927.58(d) (Con.)

(5) Delay in closing. The loan will not be closed if, at the loan closing, the seller (in a sale transaction) or the borrower (in a nonpurchase money loan situation) indicates that construction, repair, or remodeling has been commenced or completed on the property, or related materials or services have been delivered to or performed on the property within the time limit specified in the affidavit, unless a State Supplement provides otherwise. The closing agent will notify the approval official, who will determine if the work of improvement could result in a lien prior to the agency lien. The State Office will, with the advice and concurrence of OGC, provide in a State Supplement the period of time to be used in completing the affidavit.

(e) Completion of closing documents. The closing agent will determine that deeds, promissory notes, mortgages, releases, and other curative instruments are completed (sealed and witnessed if required by State law) and, if necessary, acknowledged and filed for record at the proper time.

(f) Assignment of future income. If Form RD 443-16, "Assignment of Income from Real Estate Security," is required in a particular case, the approval official will prepare the form and have it available for execution by the borrower when the transaction closes. The closing agent will see that the form is properly completed, executed (sealed and witnessed if required by State law), and acknowledged by the borrower.

(g) Return of loan documents to approval official after loan closing. Within 1 day after loan closing, the closing agent will return completed and executed copies of Forms RD 1927-15 or 3550-25, the executed original promissory note, and all other documents required for loan closing (except the mortgage), to the approval official. If the recorded mortgage is customarily returned to the borrower or closing agent after recording, then it must be forwarded to the approval official immediately. (Revised 08-18-04, PN 378.)

(h) Final title opinion or title insurance policy. As soon as possible after the transaction has been closed.

(1) Final title opinion. The attorney will issue a final title opinion to the agency and the borrower on Form RD 1927-10. If that form is not legally sufficient in a particular State, a State form approved by OGC may be used. Issuance of the final title opinion should not be held up pending the return of recorded instruments. If it is not possible for the final title opinion to show the book and page of recording of the agency security instrument, the words

"and is recorded" in paragraph II B of Form RD 1927-10 may be deleted and the following blank space completed to show the filing office and the filing instrument number, if available. Attached to the final title opinion will be required documents then available, including any which the approval official has furnished to the attorney which were not previously returned. The attorney will ensure that all recorded instruments are forwarded or delivered to the proper parties after recording. The certification of title will be forwarded for a voluntary conveyance.

(2) Title insurance policy. The closing agent will send or deliver the title insurance policy, with the United States listed as mortgage holder, to the approval official. The policy will be subject only to standard exceptions and those outstanding encumbrances, and exceptions approved by the approval official. If an owner's policy of title insurance is requested, the closing agent will send or deliver it to the borrower. The closing agent will ensure that all recorded instruments are delivered or sent to the proper parties after recording.

(3) Responsibilities of the approval official. The approval official will check the final title opinion or lender title policy to make sure that the lien priority required in the loan approval has been obtained. Forms RD 1927-15 or 3550-25 will be checked to see that funds were disbursed as authorized. If these conditions have not been met, the approval official will report it to the State Office for advice. (Revised 08-18-04, PN 378.)

(i) Other services of the closing agent.

(1) The closing agent will assist the approval official in preparing, completing, obtaining execution and acknowledgment, and recording the required documents when necessary. The closing agent will keep the approval official advised as to the progress of title clearance and preparation of material for closing the transaction.

(2) The closing agent will provide services for deeds in lieu of foreclosure as set forth in § 1927.62 of this subpart, and § 1955.10 of subpart A of part 1955 of this chapter.

§ 1927.59 Subsequent loans and transfers with assumptions.

Title services and closing for subsequent loans to an existing borrower will be done in accordance with previous instructions in this subpart, except that:

(a) Loans closed using title insurance or title opinions.

(1) Title insurance or title opinions will be obtained unless:

(i) The cost of title services is excessive in relationship to the size of the loan;

(ii) The agency currently has a first mortgage security interest;

(iii) The applicant has sufficient income to service the additional loan;

(iv) The borrower is current on the existing agency loan; and

(v) The best mortgage obtainable adequately protects agency security interests.

(2) Title insurance or a title opinion will not be obtained if a subsequent Section 504 loan is being made where the previous Section 504 loan was unsecured or secured for less than \$7,500 and the outstanding debt amount plus the new loan is less than \$7,500.

(3) Loans closed using a new title insurance policy:

(i) Will cover the entire real property which is to secure the loan, including the real property already owned and any additional real property being acquired by the borrower with the loan proceeds.

(ii) Will cover the entire amount of any subsequent loan plus the amount of any existing loan being refinanced (if the existing loan is not being refinanced, the new lender policy will insure only the amount of the subsequent loan).

RD Instruction 1927-B
§ 1927.59 (Con.)

(b) Title services required in connection with assumptions. These requirements are contained in part 1965, subpart A, B, and C, of this chapter and 7 CFR part 3550 as appropriate for the loan type. (Revised 01-23-03, SPECIAL PN.)

§§ 1927.60 - 1927.61 [Reserved]

§ 1927.62 Voluntary conveyances.

When a borrower offers to convey security, the approval official will process and close the transaction according to § 1955.10 of subpart A of part 1955 of this chapter. The closing agent will issue or cause to be issued a final title opinion or policy of title insurance indicating that title is vested in the United States of America subject only to the agency liens or prior liens previously approved by the agency in accordance with § 1955.10 of subpart A of part 1955 of this chapter.

§§ 1927.63 - 1927.64 [Reserved]

§ 1927.65 Additional requirements in connection with loans to homestead entrymen, contract purchasers of farm units from the Bureau of Reclamation, and certain American Indians.

Whenever loans or assumptions are subject to agreements with other agencies (e.g., loans to or assumptions by homestead entrymen, American Indians, or contract purchasers from the Bureau of Reclamation), the title clearance and closing of the transaction will be handled in accordance with special instructions issued by the agency and/or other parties involved applicable to the type of transaction, as well as those of this subpart. The special instructions may be in the form of a Memorandum of Understanding with the advice and approval of OGC.

§ 1927.66 Cancellation of loan, assumption, or credit sale.

If it is determined that the transaction will not be closed, the approval official will promptly notify the borrower and the following parties who are involved in the case at the time the determination is made: the seller, attorney(s), OGC, and the title company.

§§ 1927.67 - 1927.89 [Reserved]

§1927.90 State Supplements.

The State Supplement issued pursuant to this subpart will have prior National Office approval and will be the minimum necessary to comply with state laws. The State Supplement will cover loan closings, where the agency is obtaining the best lien obtainable and there will be no title clearance for such loan provided by a title insurance company or attorney.

§1927.91 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with applicable law or opinion of the Comptroller General. The Administrator may exercise this authority upon written request from the State Office or Deputy Administrator, provided the Administrator determines that application of the requirement or provision would adversely affect the Government's interest. Request for exception must be supported with documentation to explain adverse effect on the Government's interest, proposed alternative courses of actions, and show how the adverse effect will be eliminated or minimized if the exception is granted.

§§1927.92 - 1927.99 [Reserved]

§1927.100 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and have been assigned OMB control number 0575-0147. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .38 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0575-0147), Washington, D.C. 20503.

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