CHAPTER 16: DISPOSING OF REAL ESTATE OWNED PROPERTY

SECTION 1: PRICING AND LISTING PROPERTIES

16.1 OVERVIEW

The Agency will make every effort to sell real estate owned (REO) properties quickly and at the best possible price. Whenever possible, preference will be given to selling REO program property to buyers eligible for Direct or Guaranteed SFH programs.

A. Sale Methods and Pricing

Most REO properties are sold through real estate brokers. However, the Agency may sell properties through sealed bid, auction, negotiation, or agreements with other Federal agencies, such as the Department of Housing and Urban Development (HUD).

REO housing is initially priced for sale at its present market value. Administrative price reductions may be taken over time to facilitate sale of the property (see Paragraph 16.3 B. for a discussion of price reductions). A schedule is published that restricts sales of program property to program-eligible buyers for a period of time before any offering to the general public, and whenever there is a reduction in price.

An Affirmative Fair Housing Marketing Plan, as described in Paragraph 16.4 A., must be prepared when 5 or more REO properties are for sale in the same market area at the same time.

B. Financing

When funds are available, the Agency may offer financing to buyers of REO property. When program credit is offered, the loan is processed following the loan origination procedures described in this handbook. If an REO property is sold for less than the appraised value to a program borrower, the equity credited to the borrower in the Form RD 3550-12, Subsidy Repayment Agreement is the difference between the selling price and the loan amount.

Nonprogram credit terms are offered when the buyer is not eligible for Section 502 assistance or the property does not qualify as a program property. Chapter 11 provides instructions for processing loans on nonprogram terms. Buyers who receive financing on nonprogram terms must be advised that they are not eligible for payment subsidies or moratoriums.

C. Warranty

The Agency does not provide a warranty of either the title or the physical condition of any REO property except with regard to contamination from hazardous substances or petroleum products. Section 4 of this chapter provides additional guidance for managing hazardous substances when disposing of REO property.

D. MortgageServ Processing for REO Sales

MortgageServ tracks the progress of REO sales and activities. Field Staff will access MortgageServ and update activity on specific properties.

16.2 CONTRACTING FOR SALES SERVICES

Agency personnel may sell REO property when staffing and workload permit, but sales are normally handled through the services of real estate brokers. The preferred method for obtaining broker services is to enter into an exclusive contract with a single broker. However, the Field Office also may enter into open listing agreements that permit any licensed real estate broker to provide sales services. Once a broker has been employed, the Agency will refer all inquiries to that broker or to the list of participating brokers.

A. Selecting Exclusive Brokers

Exclusive broker contracts are awarded on a competitive basis. In order to do business with the Agency, brokers must be properly licensed in the State in which they do business. Attachment 16-A provides a sample solicitation package, sample broker qualifications, and criteria that may be used to evaluate offers from prospective brokers.

B. Announcing Open Listing

When an open listing method is used to obtain broker services, any licensed real estate broker can offer to provide the services. At least annually, the Field Office should announce that sales services are being requested by advertising in a newspaper of general circulation or sending notices to all real estate brokers in the counties served by the Field Office. Attachment 16-B provides a sample advertisement.

Brokers who respond in writing and are determined to be qualified will be designated as "participating brokers." Each participating broker must execute Form 1955-42, Open Real Property Master Listing Agreement, which provides the terms and conditions under which the sales services are to be provided.

C. Commissions

Broker's commissions will be negotiated as part of the selection process and are not paid until the sale has closed and title has passed to the purchaser. Commissions should not exceed the typical commissions paid for comparable services.

D. Broker Purchases of REO Properties

Participating brokers must notify the Agency whenever a participating real estate broker, the broker's salesperson, a member of the broker's or salesperson's household, or a legal entity in which the broker or salesperson has an interest, buys REO property.

If Agency credit is required, no commission will be paid to participating brokers who purchase an REO property, and only half of the standard commission will be paid to a non-participating broker who purchases an REO property.

16.3 PRICING AND SALES SCHEDULES

REO housing is priced and initially offered for sale at its present market value, based on a current appraisal. Administrative price reductions may reduce the offering price to facilitate the sale. Mineral, water, and similar rights are generally sold with the property and are not sold separately except when the Government's security interest will not be jeopardized. Lease or royalty interests that do not pass by deed are assigned to the buyer.

A. Appraisals

To determine the property's present market value, the Field Office must arrange for an appraisal using the procedures described in Section 5 of Chapter 5. If repair or improvement is planned, the appraisal must provide both as-is and as-improved values. Each as-improved appraisal must include a list of the planned repairs. Any special flood or mudslide hazard areas or wetlands and any flood plain or wetland use restrictions must be reflected in the appraisal. All REO property considered for disposal or lease must be evaluated for possible contamination from hazardous substances or petroleum products through the process of due diligence and completion of the Transaction Screen Questionnaire ASTM Standard E-1528 (TSQ) as described in Paragraph 16.18. This will normally be completed at the same time as the appraisal.

A property must be reappraised whenever its condition has deteriorated, it has been significantly damaged or vandalized, additional repairs and improvements have been made, or there has been a change in market conditions. Field Staff should be especially alert to potential contamination from unauthorized dumping while the property is owned by the Agency and, if necessary, update the TSQ and the appraisal prior to sale or lease. The need for reappraisal should be established as quickly as possible so that the property is offered at its true value. Appraised value is not affected by administrative price reductions.

B. Sales Schedules and Administrative Price Reductions [7 CFR 3550.251(c)(4)]

The sale of REO program property is restricted for Direct or Guaranteed SFH loans when a property is first offered for sale and any time an administrative price reduction is taken. Exhibit 16-1 provides the sales schedule for program property; Exhibit 16-2 provides the sales schedule for nonprogram properties. The sales price is fixed when a sales contract is executed and does not decrease further based upon scheduled price reductions.

Exhibit 16-1

Sales Schedule for Single Family Housing REO Property Program Property

DATES	ACTION
Days 1-60	Available for sale exclusively to eligible Direct or Guaranteed SFH buyers for 100 percent of market value.
Days 61-90	Available for sale to anyone for 100 percent of market value.
Days 91-120	Available for sale exclusively to eligible Direct or Guaranteed SFH buyers for 90 percent of market value.
Days 121-150	Available for sale to anyone for 90 percent of market value.
Days 151-180	Available for sale exclusively to eligible Direct or Guaranteed SFH buyers for 80 percent of market value.
Days 181-210	Available for sale to anyone for 80 percent of market value.
Day 211	Submit REO file with documentation of marketing efforts to State Office for further advice on sales incentives or to authorize sealed bid/auction.

Exhibit 16-2

Sales Schedule for Nonprogram REO Property

DATES	ACTION
Days 1-60	Available for sale to anyone for 100 percent of market value.
Days 61-90	Available for sale to anyone for 90 percent of market value.
Days 91-120	Available for sale to anyone for 80 percent of market value.
Day 121	Submit REO file with documentation of marketing efforts to State Office for further advice on sales initiatives or to authorize sealed bid/auction.

Case files of program properties that do not sell after 7 months on the market and nonprogram properties that do not sell after 4 months on the market are referred to the State Director to determine whether additional marketing efforts or incentives are needed.

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SECTION 2: MARKETING

16.4 MARKETING AND ADVERTISEMENT

A good marketing plan is the key to reaching the maximum number of potential buyers and to ensuring that eligible Direct or Guaranteed SFH loan applicants have an opportunity to purchase REO properties. The Agency may advertise directly or contract for advertising services. Exclusive broker contracts may include advertising services. All advertisements must state occupancy or environmental restrictions.

Property on Tribal Allotted or Trust Land
[7 CFR 3550.251(c)(3)]

REO property located on tribal allotted or trust land will be sold or otherwise disposed of only to an eligible tribal member, the tribe, or to the Indian Housing Authority serving the tribe. Attachment 16-C may be used as a guide in notifying these entities of an available property.

A. Fair Housing and Affirmative Fair Housing Marketing Plan

All advertising must meet equal housing opportunity requirements and contain the equal housing opportunity statement and logo. An Affirmative Fair Housing Marketing Plan is required whenever there are 5 or more REO properties for sale in the market area at the same time. The plan remains in effect for 1 year or until all properties covered under the plan are sold, whichever is later. When an exclusive broker contract is used, the plan is prepared by the broker and approved by the State Director. When a sale is conducted by the Agency or under an open listing agreement, the plan is prepared by Field Staff and must be approved by the State Director. RD Instruction 1901-E provides more guidance on civil rights requirements.

B. Truth in Lending Requirements

If the availability of Agency financing will be advertised, marketing efforts must conform to the requirements of the Truth in Lending Act. Exhibit 16-3 highlights these requirements (see RD Instruction 1940-I, for additional information).

C. Advertising and Marketing Methods

Advertising efforts should be designed to reach a broad audience. Each Field Office should identify appropriate marketing efforts and tailor them for each market area. At a minimum, advertisements must be placed in newspapers of general circulation and posted on the Field Office bulletin board. Other marketing efforts that may be appropriate include:

- Posting advertisements in public locations accessible to prospective purchases, including community bulletin boards and major employment sites;
- Broadcasting announcements on radio or television; or
- Informing potential program applicants or investors of the availability of REO properties.

Exhibit 16-3

Truth in Lending Highlights

- Advertisements that state specific credit terms must state only terms that will actually be offered.
- Any finance charge listed must be stated as an annual percentage rate.
- Key terms related to financing used in the advertisement must be defined.

Sample advertisements are included in Attachment 16-D.

D. Review of Marketing for Unsold Properties

At least quarterly, the State Director must review the status of unsold REO property to ensure that acquired properties are being placed on the market promptly, properties on the market are selling within a reasonable time frame, and that properties under contract are closed promptly. Of particular concern are properties:

- Acquired more than 30 days ago that have not yet been made available for sale;
- That have been available for sale for 3 months or more and are not under contract; and
- That have been under contract for more than 30 days and have not closed.

16.5 SPECIAL MARKETING TECHNIQUES

A. Buyer Incentives

The State Director may authorize buyer incentives when Field Staff provide evidence that a specific market area is depressed and the incentives are required to stimulate buyer interest. To request approval for buyer incentives, the Field Office must describe past efforts to sell the property and explain why the proposed incentives are expected to produce improved results. Incentives, such as offering to provide 1 or more home appliances or to pay closing costs, may be appropriate for any property. Amortization schedules longer than the standard term may be offered for nonprogram properties.

B. Broker Incentives

When an additional broker incentive is needed, such as when a very low-value property offers an inadequate commission, the State Director may authorize a minimum commission or fixed-amount sale bonus. To request the incentive, the Field Office must describe the past efforts to sell the property and justify the amount and the purpose of the incentive. Upon the approval of the State Director, a written offer of the incentive that specifies the requirements and circumstances in which the incentive will be given must be provided to the broker.

C. Acquisition of Land, Easements, or Rights-of-Way to Effect Sale

When it will help the sale of REO property and it is in the best interest of the Government, the State Director may authorize the acquisition of adjacent land, easements, or rights-of-way in order to cure title defects or encroachments. Additional land may not be acquired at a cost in excess of its appraised market value.

16.6 REO PROPERTY NOT MEETING DSS STANDARDS [7 CFR 3550.251(c) (2)]

When REO property does not meet DSS standards and it is not economically feasible for the Government to repair it, the property is listed, advertised, and sold with specific occupancy restrictions.

DSS housing is defined as housing that meets the requirements described in RD Instruction 1924-A for existing construction. If the housing does not meeting the requirements, it still may be considered DSS if it:

- Is structurally sound and habitable;
- Has a potable water supply;
- Has functionally adequate, safe, and operable heating, plumbing, electrical and sewage disposal systems;
- Is energy efficient; and
- Is safe - that is, a hazard does not exist that would endanger the health or safety of occupants.

The deed by which such a property is conveyed will contain a covenant restricting it from residential use until it meets the Agency's dwelling standards, as discussed in Section 2 of Chapter 5. Property that is not DSS must still meet the Agency's environmental requirements, including the management of hazardous substance requirements discussed in Section 4 of this chapter.

In the event that the Agency has acquired property that is unsafe and cannot feasibly be made safe, for reasons that are environmental in nature or relate to contamination from hazardous substances or petroleum products, Field Staff will provide appropriate information to the State Director including the observations and recommendations of the State Environmental Coordinator. The State Director will submit the case file, along with complete documentation of the problem and a recommended course of action, to the Deputy Administrator, Single Family Housing, with a copy to the Director, Program Support Staff for their joint review and guidance.

A. Notice of Occupancy Restriction

The notice of sale and sale contract must describe the specific conditions that prohibit occupancy and the items necessary for the property to meet DSS standards, using Form RD 1955-44, Notice of Residential Occupancy Restriction or language similar to the following:

> "Pursuant to section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), RHS has determined the dwelling on this property inadequate for residential occupancy. The quitclaim deed by which this property will be conveyed will contain a covenant restricting it from residential use until the dwelling is repaired or renovated as follows:" (insert those items necessary for the property to meet DSS standards.)

For purposes of advertising, the list of specifications may be replaced with a statement to contact the Agency, or the real estate broker under an exclusive listing contract or "any real estate broker" for open listing agreements, whichever is relevant, for a list of specific items necessary for the property to meet DSS standards.

B. Quitclaim Deed Restrictive Covenant

The quitclaim deed must contain a covenant restricting residential occupancy which describes the conditions which prohibit occupancy and the specific items necessary for the property to meet DSS standards, using Form RD 1955-44 or language in a State Supplement, similar to the following:

"Pursuant to Section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480(e), the purchaser ('Grantee' herein) of the above described property ('subject property' herein) covenants and agrees with the United States acting by and through the U.S. Department of Agriculture ('Grantor' herein) that the dwelling unit located on the subject property as of the date of this quitclaim deed will not be occupied or used for residential purposes until the item(s) listed at the end of this paragraph have been accomplished. This covenant shall be binding on Grantee and Grantee's heirs, assigns and successors and will be construed as both a covenant running with the subject property and as equitable servitude.

This covenant will be enforceable by the United States in any court of competent jurisdiction. When the existing dwelling unit on the subject property complies with the aforementioned standards of the U.S. Department of Agriculture in accordance with its regulations, the subject property may be released from the effect of this covenant and the covenant will thereafter be of no further force or effect. The property must be repaired as follows:_ (Insert the items referenced in the notice of sale and sale contract, necessary for the property to meet DSS standards).

C. Release of Restrictive Covenant

When the owner requests a release of the restrictive covenant, the Agency inspects the property. The Agency will provide to the owner a release of the covenant if the conditions which prohibited occupancy have been corrected, the specific items necessary for the property to meet DSS standards have been provided, or the structure necessitating the restrictive covenant has been removed from the site. The owner will be responsible to file such release and any related filing costs.

SECTION 3: SALE METHODS

16.7 REGULAR SALE METHOD

No offers to purchase an REO property will be accepted until the property is officially offered for sale. Any offers received before the property is offered for sale must be returned to the offeror.

A. Listing the Property

REO property is offered for regular sale using Form RD 1955-43, Notice of Real Property for Sale (Single Family Housing). The date indicated on Form RD 1955-43 is the effective date of the offer. An offer may be submitted at any time after the effective date listed in the notice.

When an offer is accepted, the notice of sale is revised to indicate that only back-up offers will be taken. The notice is not withdrawn until the sale is closed, except when the offer is from a nonprofit organization or a public body for transitional housing for the homeless.

REO Property Subject to Redemption Rights

REO property subject to redemption rights may still be sold if Field Staff determines that there is no probability of its redemption and State law permits its sale. In States where such sales are permitted, a State Supplement will be issued with the specific State law requirements. The buyer must sign a statement acknowledging sale conditions under State law. The original signed statement will be filed in the REO file and transferred to the borrower's case file if it is Agency financed.

B. Submission Requirements

An offer to buy must be submitted on Form 1955-45, Standard Sales Contract, Sale of Real Property by the United States. Offers received in any other form must be returned to the offeror. Any offer that is made contingent upon Agency credit should be accompanied by a completed Form RD 410-4, Application for Rural Assistance (Nonfarm Tract) Uniform Residential Loan Application.

C. Receiving and Considering Offers

Each offer must be date stamped when it is received. When a property is first offered for sale, all offers received during the first 4 business days after the effective date will be considered as if they were received on the same day. Any offer on a program property from other than a program applicant during the 60-day reservation period will be held and considered received on the 61st day.

Offers received on the same business day are selected in the following order.

1. An offer from an eligible Direct or Guaranteed SFH loan-applicant with a request for credit on program terms. All program offers are evaluated as if they were submitted at the listed price, regardless of the offering price.

2. An offer from a nonprofit or public body for conversion to use as transitional housing, multifamily housing, or for other special purposes as specified in 7CFR Part 3550, Section 3550.251(d).

3. A cash offer, from the highest to the lowest.

4. A nonprogram credit offer, from the highest to the lowest. An offer with a request for credit in excess of the market value of the property is not acceptable. If an excessive amount of credit is requested, the offeror will be given the opportunity to reduce the credit request to an amount equivalent to or lower than the market value less any required down payment. However, no change is made in the offered price.

The acceptable offer from like offers of equal priority received on the same business day are selected by lot. When selection is by lot, offers drawn after the first are held as back-up and the offeror so notified.

The Agency selects the first minimum acceptable offer received and executes Form RD 1955-45. Form 1955-45 is sent to the bidder along with Handbook Letter 10(3550), ‘Status of Offer to Buy Single Family Housing REO Property,’ and Handbook Letter 10(3550) is sent to the bidder’s broker. Handbook Letter 10(3550) also is used to notify all unsuccessful bidders of the status of their offers.

D. Earnest Money

The notice of sale must specify any earnest money requirements. No earnest money will be collected when Agency staff conduct the sale. In broker assisted sales, an earnest money deposit in an amount that is customary for the market, is required when the sales contract is signed. Earnest money is held by real estate brokers and is applied to the purchaser’s closing costs.

E. Cancellation of Sales Contracts

If an offer contingent upon obtaining Agency financing on program terms is selected and the credit request is subsequently rejected, the next offer is considered. Property is not held off the market pending the outcome of an appeal. If there are no back-up offers, the notice of sale is revised to indicate the new status of the property.

When a sales contract is canceled due to offeror default, any earnest money collected is forwarded to the local Agency office where it will in turn be forwarded to CSC for application to the General Fund.

16.8 DISPOSITION BY SEALED BID OR AUCTION

Any use of the sealed bid or auction methods must be authorized by the State Director. Program properties are considered for sale using these methods only when a property has not sold through regular sales efforts after 7 months. Either method may be used as the initial sale effort for nonprogram properties when regular sale efforts are not likely to result in prompt sale (such as when structures have been substantially destroyed by fire).

A. Establishing the Minimum Acceptable Offer

Field Staff must develop and document the recommendation for the minimum acceptable bid or sales price using the Net Recovery Value worksheet provided in Appendix 11.

B. Publicizing the Sale

The Agency solicits sealed bids or publicizes an auction by public notice. The notice must include the date, time, and place of the bid opening or auction, describe how bids are to be made, the required percentage of bid deposit, the maximum credit terms, the cash preference percentage described in Paragraph 16.8 C.3., and other pertinent information, such as occupancy restrictions, or notice of special flood or mudslide hazard area or wetland.

C. Sealed Bid Procedures

1. Submission Requirements

Sealed bids must be made on Form RD 1955-46, Invitation Bid and Acceptance-Sale of Real Property by the United States, and be accompanied by a deposit provided in the form specified in the bidding instructions. No deposit is required from bidders who are eligible program purchasers. A minimum deposit of 10 percent is required for nonprogram loans.

Bidders must submit their bids in a sealed envelope marked: "SEALED BID OFFER *." (*Insert "PROPERTY IDENTIFICATION NUMBER.")

Bids may be submitted for individual properties or a group of properties.

2. Receiving and Opening Bids

All bids will be date and time stamped when they are received. Sealed bids will be held in a secured file before bid opening. The bid opening will be held publicly at the place and time specified in the notice with at least 2 Agency employees present. Each bid received will be recorded showing the name and address of the bidder, the amount of the bid, the amount and form of deposit, and any conditions of the bid. The record of bids will be signed by the staff person conducting the bid opening and retained in the REO file.

3. Reviewing and Accepting Bids

Only responsive bids will be considered. To be considered responsive, bids must be signed and dated by the offeror, include any required deposit, and be for an amount at least equal to the established minimum bid. Minor deviations or defects in the bid submission may be waived by the Approval Official so long as the bid meets these minimum requirements.

Generally, the highest bid will be selected. However, cash bids will be given preference over bids that are contingent upon the offeror obtaining financing if the cash offer is at least equal to a specified percentage of the highest offer. Exhibit B of RD Instruction 440.1 specifies the applicable percentage.

In the case of identical bids for a program property eligible Direct or Guaranteed SFH loan, purchasers will be selected by lot before bidders who are not eligible for a Direct or Guaranteed SFH loan.

4. No Acceptable Bid

If no acceptable bids are received, the Agency may negotiate a sale at the best price possible in accordance with Paragraph 16.9. All bidders must be informed, in writing, of any anticipated negotiations. Deposits must be returned to all bidders by certified mail, return receipt requested.

5. Notification to Bidders

Field Staff also must use Handbook Letter 10 (3550) to notify unsuccessful bidders that their bids were not accepted and who the successful bidder was. Deposits must be returned to all unsuccessful bidders by certified mail, return receipt requested.

When a bid is accepted, Field Staff must execute Form RD 1955-46 and send Handbook Letter 10 (3550), Status of Offer to Buy Single Family Housing REO Property.

6. Failure to Close

If a successful bidder fails to perform under the terms of the offer for any reason other than denial of credit by the Agency, the bid deposit will be forfeited and forwarded to CSC for application to the General Fund.

Upon determination that the successful bidder will not close, the State Director may authorize direct negotiations with the next highest bidder, authorize another sealed bid sale, or authorize negotiations with other interested parties, as described in Paragraph 16.9.

D. Auction Procedures

The State Director will determine whether an Agency employee will conduct the auction or whether the complexity of the sale requires the services of a professional auctioneer. Form 1955-46, Invitation Bid and Acceptance-Sale of Real Property by the United States, is used for auction sales.

1. Selecting a Professional Auctioneer

Auctioneers are selected through a competitive process using the procedures described in RD Instruction 2024-A. The commission will be set as part of the auctioneer solicitation. If an auctioneer submits a bid with a commission rate that is significantly lower than other bids, detailed documentation will be provided attesting that they have successfully sold properties at the lower rate with no compromise in service.

2. Bid Deposits

Successful bidders will be required to make a bid deposit of 10 percent of the sales price, except this fee will be waived for eligible Direct or Guaranteed SFH bidders, pending final determination of eligibility. Deposits should be in the form of cashier's check, certified check, postal or bank money order, or bank draft payable to the Agency. Cash and/or personal check may be accepted only if deemed necessary for a successful auction to occur by the person conducting the auction.

Where program financing is authorized, all notices and publicity should provide for a method of prior approval of credit and the credit limit for potential eligible Direct or Guaranteed SFH purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept bids which request program financing in excess of the market value.

3. Accepting Bids

When the highest bid is lower than the minimum amount acceptable to the Agency, negotiations should be conducted with the highest bidder or, in turn, the next highest bidder(s) or other persons known to be interested to obtain an executed bid at the predetermined minimum.

4. Purchaser's Default

Upon purchaser's default, the Field Staff will remit the bid deposit to CSC as a Miscellaneous Collection. The property may than be disposed of through a negotiated sale.

16.9 NEGOTIATED SALE

If no acceptable bid is received either from a sealed bid sale or at a public auction, the State Director may negotiate a sale at the best price possible without further public notice by negotiating with interested parties, including previous bidders.

A sale made through negotiation will be documented and accepted by the Approval Official on Form RD 1955-46, Invitation Bid and Acceptance-Sale of Real Property by the United States and must be accompanied by a bid deposit of 10 percent of the negotiated sales price, except that the deposit will be waived for program-eligible buyers.

16.10 DISPOSAL OF PROPERTY FOR SPECIAL PURPOSES [7 CFR 3550.251(d)]

REO properties may benefit people in need of housing who can be reached in cooperation with other programs or Federal agencies. Cooperative agreements with other Federal or State-assisted housing programs will be announced and updated with Administrative Notices.

A. Multifamily Housing

Multiple units of REO property may be sold as multifamily housing. In this case, the properties and the applicants must meet the requirements for the loan program under which the sale is proposed.

B. Transitional Housing for the Homeless

Upon request from a public body or nonprofit organization, the Agency provides a list of available REO property, designating whether each is a program or nonprogram property. Upon receipt of written notice from the entity of its intent to buy the property, the Agency withdraws the property from the market for a period not to exceed 30 days to provide the entity time to execute a sale contract. An earnest money deposit is not required.

1. Price

If the entity wants to buy a nonprogram property, the listed price is discounted by 10 percent of the appraised value. Program property is not discounted.

2. Repairs to Meet DSS Standard

If the entity wants to buy a nonprogram property that does not meet DSS standards, the Agency repairs it to remove health or safety hazards unless cost of the repairs is prohibitive. Cosmetic repairs such as painting, floor covering, landscaping, and repairs to improve thermal performance are the responsibility of the buyer. All repairs or renovations to make the property habitable and to meet DSS standards should be discussed, put in writing, and made part of the sale contract. However, the environmental requirements, including the requirements for management of hazardous substances and petroleum products, discussed in Section 4 of this chapter must be followed. The Agency shall abate all identified lead based paint hazards in all REO properties built before 1960.

C. Affordable Housing [7 CFR 3550.251(c)(4)]

REO property may be sold under special provisions to nonprofit organizations or public bodies for the purpose of providing affordable housing to very low and low-income families. Information about available programs will be distributed by the National Office as they are authorized.

16.11 DISPOSAL AS CHATTEL OR SALVAGE

If the Agency is unable to sell nonprogram property by regular sale, sealed bid, or public auction, the structure may be sold as chattel or salvage to be removed from the site. Form 1955-47, Bill of Sale "A" is used to transfer title of real property converted to chattel to the purchaser.

If no offer is received to remove the structure, the State Director may contract or arrange to have it demolished, in exchange for the salvaged materials or otherwise as determined appropriate. For example, the local fire fighting unit may be permitted to use a structure slated for demolition as a burn for fire fighting practice. Once the structure is disposed of, the lot will be offered for sale as nonprogram REO property.

If REO property is a vacant lot, the lot is offered for sale as nonprogram property.

SECTION 4: ENVIRONMENTAL REQUIREMENTS

16.12 OVERVIEW

The Agency must complete the appropriate level of environmental review under the National Environmental Policy Act for disposal of REO property in accordance with RD Instruction 1970 series "Environmental". The proposed disposal of REO property will normally qualify as a categorical exclusion. However, an environmental assessment, and when necessary an EIS, is required for any proposed disposal of REO property that meets one of the following criteria:

- The Agency has reason to believe the transaction would result in a change in use of the REO property within the reasonably foreseeable future.
- There is a violation of applicable Federal, state, or local statutory, regulatory, or permit requirements for environment, safety, and health.
- Conditions on the site are likely to cause uncontrolled or unpermitted releases of hazardous substances, pollutants, contaminants, or petroleum and natural gas products.
- There is an existence of controversy based on effects to the human environment brought to the Agency's attention by a Federal, tribal, state, or local government agency.
- The property has an adverse effect on the following environmental resources:
  - Historic properties;
  - Federally listed threatened or endangered species, critical habitat, Federally proposed or candidate species;
  - Wetlands (those actions that propose to convert or propose new construction in wetlands will require consideration of alternatives to avoid adverse effects and unwarranted conversions of wetlands);
  - Floodplains (those actions that introduce fill or structures into a floodplain or propose substantial improvements to structures within a floodplain will require consideration of alternatives to avoid adverse effects and incompatible development in floodplains. Actions that do not adversely affect the hydrologic character of a floodplain, such as buried utility lines or subsurface pump stations, would not create an extraordinary circumstance; or purchase of existing structures within the floodplain will not create an extraordinary circumstance but may require consideration of alternatives to avoid adverse effects and incompatible development in floodplains when determined appropriate by the Agency);

- Areas having formal Federal or state designations such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; or marine sanctuaries;
- Special sources of water (such as sole source aquifers, wellhead protection areas, and other water sources that are vital in a region);
- Coastal barrier resources or, unless exempt, coastal zone management areas; and
- Coral reefs.

This section summarizes the basic environmental information that pertains to disposal of REO properties. For more detailed information and assistance, refer to RD Instruction 1970 series "Environmental" or consult the State Environmental Coordinator.

16.13 PROPERTY LOCATED WITHIN A SPECIAL FLOOD OR MUDSLIDE HAZARD AREA OR CONTAINS WETLANDS

REO property located in a special flood or mudslide hazard area will not be sold for residential purposes unless it is determined safe—that is, any danger that exists by virtue of the floodplain location is not likely to endanger the health or safety of the occupants—and prior written notice of the specific hazard is given.

Form 1955-46, "Invitation Bid and Acceptance-Sale of Real Property by the United States," must include notice of special flood or mudslide hazard areas or wetlands and related use restrictions. Prospective purchasers, auctioneers, and brokers must be informed and acknowledge receipt of notice of these circumstances, and all advertisements need to reference them.

The conveyance instrument for disposal of REO property containing wetlands or located in a special flood or mudslide hazard area must specify those uses of the property that are restricted under any Federal, State or local floodplain and wetland regulations, as well as other appropriate restrictions. Use restrictions will relate to the use of the property by the purchaser and any successors as determined by the Agency. Examples of use restrictions include prohibition of draining or filling of floodplain or wetland areas, prohibition of new above-ground construction on that portion of the property located in the floodplain or wetland area, and prohibition against subdividing floodplain or wetland property into building lots.

16.14 COASTAL BARRIER RESOURCES SYSTEMS [7 CFR 1955.137(a)]

REO property located within a Coastal Barrier Resources System (CBRS) will not be sold until the State Environmental Coordinator has consulted with the appropriate Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director concurs that the proposed sale does not violate the provisions of the Coastal Barrier Resources Act (CBRA).

No Federal financing is permitted for REO properties located within a CBRS, since flood insurance under the National Flood Insurance Program is not available for properties within the CBRS.

16.15 NATIONAL REGISTER OF HISTORIC PLACES

When REO property has been determined to be listed on (or eligible to be listed on) the National Historic Register, the Loan Approval Official responsible for conveyance must consult with the State Historic Preservation Officer (SHPO) in order to establish any necessary restrictions on the use of the property so that the future use will be compatible with preservation objectives as long as it does not result in an unreasonable economic burden to public or private interest. The Advisory Council on Historic Preservation must be consulted by the Loan Approval Official after the discussions with the SHPO are concluded.

Any restrictions that are developed on the use of the property as a result of the above consultations must be made known to potential bidders or purchasers through all advertisements and notices regarding the property, as well as in writing when the prospective purchaser signs the bid or offer to purchase. Acknowledgment of receipt of this notice will be obtained from the purchaser at that time and kept in the file.

If the property is located on Tribal land or in Indian country, additional consultation with the Tribal Historic Preservation Officer should also be initiated.

16.16 PROTECTIVE COVENANTS AND EASEMENTS

The Agency has an affirmative responsibility to take actions to protect environmental resources located on REO property before that property is disposed of. "Affirmative responsibility" refers to the fact that there are certain protections that are required by Federal, State, or local environmental laws. Frequently, such protective actions or mitigation measures will take the form of a covenant or conservation easement. In addition to floodplains, wetlands, coastal barriers, and historic places, this affirmative responsibility also extends to the following resources:

- Listed or proposed endangered or threatened species;
- Listed or proposed critical habitat;
- Designated or proposed wilderness areas;
- Designated or proposed wild or scenic rivers;
- Natural landmarks listed in the National Register of Natural Landmarks;
- Sole source aquifer recharge areas designated by EPA;
- Designated national trails;
- Important farmland; or
- Areas of high water quality.

The State Environmental Coordinator should be consulted if it appears that the proposed disposal of REO property may involve any of these resources.

16.17 REPORTABLE UNDERGROUND STORAGE TANKS

When disposing of REO property containing reportable underground storage tanks as described in Paragraph 15.7 A.4., the Agency, if it has not already done so, must file the appropriate report with the State agency identified by the Environmental Protection Agency (EPA). The potential purchaser of the property will be informed by the Loan Approval Official of the reporting requirement and provided a copy of the filed report.

16.18 MANAGEMENT OF HAZARDOUS SUBSTANCES AND PETROLEUM PRODUCTS

All REO property considered for disposal must be evaluated for possible hazardous substance contamination. To do this, the Loan Approval official completes the Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ), the initial level of inquiry in the due diligence process. (If a TSQ was completed prior to acquisition of the property, the Loan Approval Official must determine if the TSQ should be updated.) If the completed or updated TSQ indicates potential contamination, it will be sent promptly to the State Environmental Coordinator for further evaluation and guidance. All clean-up actions will be taken under the guidance of the State Environmental Coordinator.

When disposing of REO property, prospective purchasers, lessees, or tenants will be notified of any possible contamination of the property by releases of hazardous substances, hazardous wastes or petroleum products, as well as any information concerning any clean-up activities by attaching to the deed or lease:

A statement that a report of the Agency's investigation into potential contamination at the site (the due diligence report) and a description of any clean-up activities is available for public review or has been made available to the purchaser or lessee; and

A statement that the Agency does not provide warranty regarding the accuracy of the information in the due diligence report or the effectiveness of any clean-up activities.

16.19 LEAD-BASED PAINT

The Agency's Lead-Based Compliance Key must be utilized for all REO properties. The Agency has adopted the following subparts of the lead based paint regulation, 24 CFR part 35:

Subpart A, "Disclosure of Known Lead Based Paint Hazards Upon Sale or Lease of Residential Property"

Subpart B, "General Lead Based Paint Requirements and Definitions"

Subpart C, "Disposition of Residential Property owned by a Federal Agency other than HUD"

Subpart D, "Project-Based Assistance Provided by a Federal Agency Other than HUD"

Subpart J, "Rehabilitation (applicable sections)"

Subpart R, "Methods and Standards for Lead Based Paint Hazard Evaluation and Hazard Reduction Activities."

The requirements of these subparts are applicable to all housing constructed prior to 1978 that is financially assisted by the Agency or is being sold by the Agency.

SECTION 5: PROCESSING AND CLOSING

16.20 OVERVIEW

If the Agency is closing the sale with program financing, the sale is closed in accordance with program closing instructions provided in Chapter 8. If other financing is being used, the financing agent's closing procedures should be followed. Cash sales are closed by the Agency collecting the sale price and delivering the Quitclaim Deed to the buyer.

Title clearance and property insurance requirements for a program financed sale are the same as for a program loan.

16.21 SPECIAL NOTICES AT SALE

A. HUD Insured Financing

If necessary to effect a sale with HUD-insured financing, the Agency may execute a sales contract amendment containing the following language:

> "It is expressly agreed that, notwithstanding any other provisions of the contract, the purchaser shall not be obligated to complete the purchase of the property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the seller has delivered to the purchaser a written statement issued by the Federal Housing Commissioner setting forth the appraised value of the property (excluding closing costs) of not less than $ (insert sales price) which statement the seller hereby agrees to deliver to the purchaser promptly after such appraised value statement is made available to the seller. The purchaser shall, however, have the privilege and option of proceeding with the consummation of the contract without regard to the amount of the appraised valuation made by the Federal Housing Commissioner. The appraised valuation is arrived at to determine the maximum mortgage the Department of Housing and Urban Development (HUD) will insure. HUD does not warrant the value nor the condition of the property. The purchaser shall satisfy himself/herself that the price and condition of the property are acceptable."

B. Disclosure of Lead-Based Paint or Hazards

In accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, sellers of housing receiving Federal assistance built before 1978 must provide the purchasers of such housing with specific information about the housing's lead history and general information on lead exposure prevention. As seller the Agency must:

- Provide the buyer with the lead hazard information pamphlet, Protect Your Family from Lead in Your Home, available from the National Lead Information Clearinghouse

at 1-800-424-LEAD, or a similar EPA-approved pamphlet developed by the State;

- Permit the buyer a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint hazard; and

- Include in the sales contract: (1) For a property constructed after 1959 and before 1978, a disclosure of any lead-based paint hazard; (2) a list of any information about the hazard available to the seller and passed on to the buyer; and (3) a Lead Warning Statement and acknowledgment, signed by the buyer. A sample disclosure format, including the required Lead Warning Statement, is provided in Appendix 12.

- For a property constructed before 1960, abate all identified lead based paint hazards in accordance with 40 CFR 745.227.

16.22 INSPECTION

An inspection of the property by the buyer should be scheduled immediately before closing to ensure the condition of the property and the resolution of any problems or discrepancies.

16.23 PRORATING REAL ESTATE TAXES AND/OR ASSESSMENTS

When REO property is subject to taxation and/or assessments, they are pro rated between the Agency and the buyer, as of the date the title is conveyed. The Agency is responsible for all taxes and assessments accrued as of the settlement date, and the buyer is responsible for all taxes and assessment which accrue after the closing date. The Agency's pro rata share is deducted from the proceeds of the sale at closing, if sufficient funds are available, or is paid under RD Instruction 2024-A.

16.24 DOWN PAYMENT

When a down payment is made, it is collected at closing, identified by property identification number, purchaser's name and case number, and remitted in accordance with program instructions.

16.25 PAYMENT OF POINTS

When a buyer is financing the purchase of property with another lender, the Agency may pay not more than 3 points if it is a customary requirement of the lender for payment by the seller and points are not paid (or increased) to reduce the interest rate.

The specific number of points to be paid by the Agency must be in the sales contract, and fixed as of the date the Agency accepts the contract. Payment is deducted from the funds due the Agency at closing and is reflected in the Closing Disclosure.

16.26 CLOSING EXPENSES

Agency expenses are deducted from sale proceeds when sufficient funds are available, and the sale is subject to the Truth in Lending Act and Real Estate Settlement Procedures Act Integrated Mortgage Disclosures (TRID) requirements, that is, an Agency financed sale or a cash sale financed by another lender. Sales subject to TRID requirements, whether by the Agency or another lender, are settled by a third-party closing agent who provides a Closing Disclosure to the seller, buyer and lender to document the distribution of sale proceeds and closing costs. When sufficient funds are not available or when the transaction is a cash sale, which is not subject to TRID requirements and therefore no Closing Disclosure is required, expenses are paid under RD Instruction 2024-A.

In program-financed sales, bid deposit and earnest money is applied to the buyer's closing costs. Under a nonprogram credit sale, the buyer pays all closing costs.

16.27 COMMISSIONS

Commissions are paid at closing if there is sufficient cash from sale proceeds to cover the commission. If not, the Agency will pay the commission and charge it to the REO account as a recoverable cost.

16.28 TRANSFERRING TITLE

The Agency conveys the property to the buyer by Form RD 1955-49, Quitclaim Deed or other form of nonwarranty deed approved by OGC. The State Director signs the conveyance instrument, a copy of which is retained in the REO property case file. The buyer is responsible for recording the instrument.

16.29 REPORTING SALE

When the transaction is closed and the conveying instrument has been delivered, record disposition in the REO system. Real property which has been disposed of by means other than sale, including total loss or destruction, will also be reported in the REO System. Sale proceeds are forwarded to CSC to the General Fund.

ATTACHMENT 16-A

SAMPLE SOLICITATION PACKAGE

I. BROKER QUALIFICATIONS

- Financial capability.
- Licensing in the State in which broker will be doing business.

II. RANKING CRITERIA FOR SELECTING BROKERS

- Previous experience with REO properties.
- Membership in Multiple Listing Service (MLS).
- Advertising plans and proposed innovative promotion methods.
- Proximity to REO properties.
- Staffing commitment to sale of properties.
- Commission Rate. If a broker submits a bid with a commission rate that is significantly lower than other bids, detailed documentation will be provided attesting that they have successfully sold properties at the lower rates with no compromise in service.

ATTACHMENT 16-B

SAMPLE ADVERTISEMENT FOR BROKERS

Broker Solicitation: Advertisements for real estate broker services will be placed at least yearly in newspapers having general circulation in the area in which the property is located. The notice will usually be placed in both the residential property section and the public notice section, altered to describe whether the agreement is to be open or exclusive. An example follows.

Public Notice

Real Estate
Brokers

The Rural Housing Service (RHS) has from time to time various Real Estate Owned (REO) properties for sale through brokers having executed a listing agreement with the agency. Licensed real estate brokers may obtain additional information by writing or visiting the local RHS office located at 32 Penny Lane, Madison City, FL 32111 or telephoning (904) 323-0010.

EQUAL HOUSING
OPPORTUNITY

ATTACHMENT 16-C

NOTIFICATION OF AVAILABLE TRIBAL PROPERTY

Name of Tribe or Indian housing Authority
Name, Title of Contact Person
Address

RE:
Borrower Name: _____
Borrower Address: _____

Brief Legal Description of Security
Property:_____
_____

The above-named Rural Housing Service (RHS) single family housing borrower is in default on an Agency loan. The borrower may sell the property and RHS is authorized to transfer the account on program terms to an eligible member of the tribe who meets RHS program requirements, or on nonprogram terms to any eligible member of the tribe, the tribe, or the Indian housing authority servicing the tribe.

We are asking for your help on the borrower's behalf in locating a buyer for the property. If the borrower does not sell the property within a reasonable time, RHS may assign the promissory note and security instruments to the tribe or the Indian housing authority servicing the tribe.

Please let us know if you will be able to assist us in locating a buyer for the property or if you are interested in securing your interest in the property by buying the RHS promissory note and security instruments. Please contact me for further information.

CONTACT: _____

PHONE: _____

ATTACHMENT 16-D

SAMPLE ADVERTISEMENT OF AVAILABLE REO PROPERTIES

Regular Sale: Advertising is an essential marketing tool in sales by RHS personnel. Advertising will be accomplished by the appropriate servicing official in accordance with Section 1 of this chapter. Full and extensive use of advertising is recommended with Field Staff having the discretion to develop creative and eye-appealing advertisements consistent with the real estate market and this handbook. Examples of advertisements are attached.

Example 1(A)

RHS

Investment Buy of the Month!

Price Slashed!

965 Della Street
Anytown, USA

Minimum Price: $25,000

This attractive frame house offers tremendous potential for the handyman who is looking for a great house at a great price.

Financing available on excellent terms.

5% down, 10 year, 10.5% APR to nonoccupant/investors

2% down, 30 year term, 10.5% APR to owner/occupants.

All rates and terms are subject to change without notice.

Contact RHS at 123-4567 or our Exclusive Broker “Ace Realty” at 123-9876.

EQUAL HOUSING OPPORTUNITY

Example 1(B)

RHS

Home of the Week

Price Slashed!

82 Town Street
Anytown, USA

Minimum Price: ~~$30,600~~

This charming three bedroom, 1 ½ bath cape cod is located in an attractive neighborhood close to town. This home has been repainted throughout, is in excellent condition and has new carpeting and appliances.

Financing available

To qualified RHS direct and guaranteed SFH loan applicants: nothing down, 33/38 year financing, 10% APR with payment assistance available to qualified applicants

To nonprogram applicants: 5% down, 10-year term, 10.5% APR to nonoccupants/investors.

2% down, 30-year term, 10.5% APR to owner/occupants.

All rates and terms are subject to change without notice.

Contact your local RHS Office at 123-4567 or any real estate broker.

EQUAL HOUSING OPPORTUNITY

Example 1(C)

RHS

Attractive RHS Homes for Sale

82 Town Street
Anytown, USA
Minimum Price: $32,000

Price Slashed!

46 Aim Street
Anytown, USA
Minimum Price: $29,000

22 Bee Street
Anytown, USA
Minimum Price: $35,000

Price Slashed!

35 Cat Street See note below
Anytown, USA
Minimum Price: $33,500

Financing Available on Excellent Terms!

To qualified RHS eligible direct or guaranteed SFH applicants applicants:
Nothing down, 33/38 year financing, 10% APR with Payment Assistance available to qualified applicants.

To nonprogram applicants:
5% down, 10 year term, 10.5% APR to nonoccupant/investors.

2% down, 30 year term, 10.5% APR to owner/occupants.

All rates and terms are subject to change without notice.

Contact your local RHS office at 123-4567 or any real estate broker.

EQUAL HOUSING OPPORTUNITY

Example 1(D)

RHS

Homes Priced to Sell

82 Town Street
Anytown, USA
Minimum Price: $32,000

Price Slashed!

46 Aim Street
Anytown, USA
Minimum Price: ~~$29,000~~ $26,500

22 Bee Street
Anytown, USA
Minimum Price: $35,000

Price Slashed!

35 Cat Street See note below
Anytown, USA
Minimum Price: ~~$33,500~~ $30,250

Financing Available on Excellent Terms!

To qualified RHS direct or guaranteed SFH loan applicants:
Nothing down, 33/38 year financing, 10% APR with Payment assistance available to qualified applicants.

To nonprogram applicants:
5% down, 10 year term, 10.5% APR to nonoccupant/investors.

2% down, 30 year term, 10.5% APR to owner/occupants.

All rates and terms are subject to change without notice.

Contact your local RHS office at 123-4567 or any real estate broker.

Note on 35 Cat Street: Available for cash or nonprogram terms only.

This property contains a dwelling unit which RHS has deemed inadequate for residential occupancy. The Quitclaim Deed by with the property will be conveyed will contain a covenant restricting the residential unit on the property from being used for residential occupancy until the dwelling is repaired, renovated, or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended 42 U.S.C. 1480. Contact RHS or any Realtor for a list of items which must be repaired/renovated.

EQUAL HOUSING OPPORTUNITY

Sealed Bid and Auction Sales: Advertising of sealed bid and auction sales is critical for a successful sale. Advertising will be consistent with the portions of this handbook governing the sale of property by sealed bid or auction. Examples of sealed bid and auction sale advertisements are attached.

Example 2(A)

RHS

Sealed Bid Sale

Property Address: 123 14th Street, Anytown USA

The subject property has been extensively damaged by fire and requires major renovation or demolition. The lot contains 10,000 square feet, hookups to public water and sewage, and is suitable for reconstruction. Sealed bids will be accepted until Friday April 1, 1996 at 2:30 p.m. at which time all bids will be opened. The property will be sold to the highest bidder. All bids must be accompanied by a 5% bid deposit in the form of a certified check. Financing is available on Nonprogram terms only -- 5% down, 10.5% APR, and 10 year repayment (all rates and terms are subject to change without notice), however preference will be given for cash. The government reserves the right to reject any or all offers.

The property has been determined by RHS to be inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed will contain a covenant restricting the residential unit on the property from being used for residential occupancy until the dwelling is repaired, renovated, or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended 42 U.S.C. 1480. The structure must be razed, or reconstructed and a Certificate of Occupancy issued before the deed restriction can be removed.

For a bid package or further information, contact RHS at 123-4567 or visit our office at 1955 Main Street, Anytown.

EQUAL HOUSING OPPORTUNITY

Example 2(B)

RHS

Investment Properties for Sale

1955 Lois Lane
Anytown, USA
Minimum Price: $22,000

114 Maple Street
Anytown, USA
Minimum Price: $22,000

Financing Available

To Non program applicants:
5% down, 10 year term, 10.5% APR to nonoccupant/investors
2% down, 30 year term, 10.5% APR to owner/occupants.

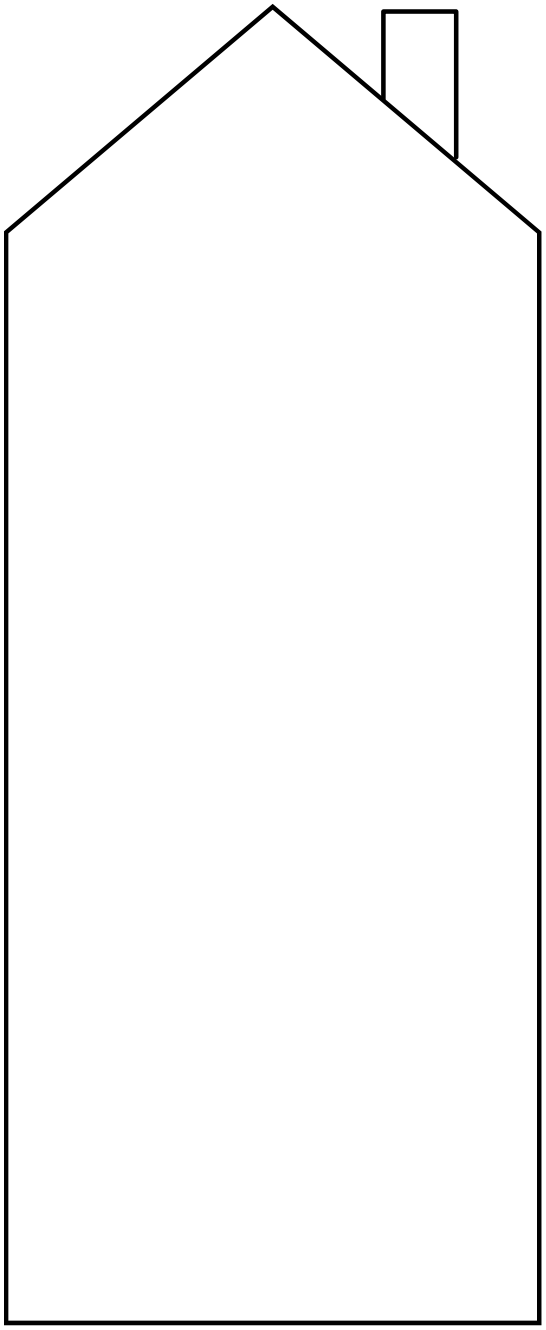
ALL RATES AND TERMS ARE SUBJECT TO CHANGE WITHOUT NOTICE.

Note: The property located at 114 Maple Street contains a dwelling unit which RHS has deemed inadequate for residential occupancy. The Quitclaim Deed by which the property will be conveyed will contain a covenant restricting the residential unit on the property from being used for residential occupancy until the dwelling is repaired, renovated, or razed. This restriction is imposed pursuant to section 510(e) of the Housing Act of 1949, as amended 42 U.S.C. 1480(e). Contact RHS or any realtor for a list of items which must be repaired/renovated.

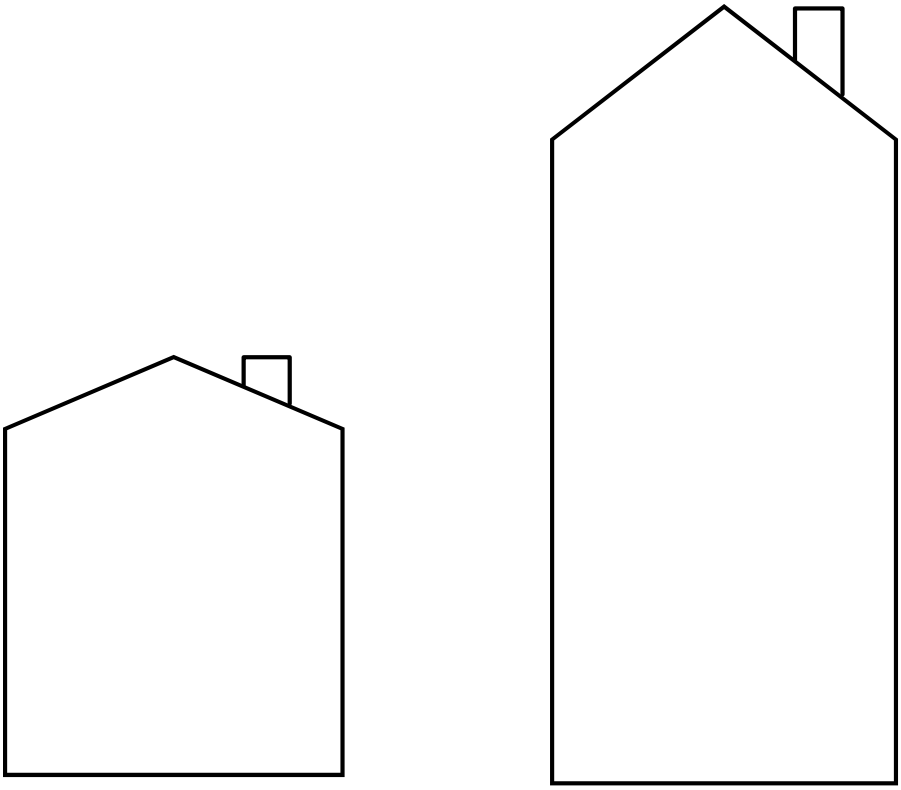
Contact your local RHS Office at 123-4567 or any real estate broker.

EQUAL HOUSING OPPORTUNITY

Templates for developing Advertisements



More Templates



Headings and logos for use with templates

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

EQUAL HOUSING OPPORTUNITY

Investment Properties for Sale

Financing Available

Investment Buy of the Month

Home of the Week

Sealed Bid Sale

Farm for Sale

Attractive RHS Homes for Sale

Homes Priced to Sell

Price Slashed!!!

Financing Available on Excellent Terms

Farm Property for Auction

All Rates and Terms Subject to Change without Notice

RHS Is An Equal Opportunity Lender