

## **CHAPTER 14: MANAGEMENT AND DISPOSAL OF REAL ESTATE OWNED PROPERTY**

### **14.1 INTRODUCTION**

When the Agency takes ownership of a project, adding the property to its inventory through liquidation proceedings, the project becomes real estate owned (REO). When the title transfers to the Agency, the property becomes an Agency asset. The Agency's objectives in managing and selling its inventory of REO properties include:

- Preserving affordable, decent, safe, and sanitary housing for tenants or potential tenants;
- Maintaining the value of the housing project;
- Protecting the Agency's financial interests;
- Ensuring that the properties comply with state and local code requirements and applicable environmental regulations; and

### **14.2 OVERVIEW OF THE CHAPTER**

This chapter is divided into five sections.

- Section 1 describes the management of custodial and REO property. It describes acceptable management methods; discusses issues related to taking possession of custodial and REO properties, such as disposing of nonsecurity property and paying taxes and insurance premiums; and explains requirements related to maintenance, environmental concerns, and other management issues.
- Section 2 covers the disposition of REO property. It describes the methods for pricing and selling the properties and outlines procedures for accepting bids from potential purchasers. It also describes the standards the property must meet before being sold.
- Section 3 describes the environmental requirements that must be fulfilled before selling an REO property. These include requirements related to flood and mudslide hazard areas, wetlands, coastal barrier resources systems, historic places, protective covenants and easements, underground storage tanks, and hazardous substances.
- Section 4 outlines the procedures for processing and closing the sale of an REO property. These procedures are similar to the procedures for closing other Agency loans. This section also highlights some of the special considerations for REO properties.
- Section 5 provides instructions on processing credit sales for non-program terms.

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## **SECTION 1: MANAGEMENT OF CUSTODIAL AND REO PROPERTY**

### **14.3 OVERVIEW**

The Agency assumes management responsibility for two types of properties: custodial and REO. Custodial property is borrower-owned property that has been abandoned. REO is Agency-owned property to which the Agency has acquired title, either as a result of foreclosure or conveyance by deed in lieu of foreclosure. This section outlines the requirements for management of each type of property.

Loan Servicers are responsible for ensuring that custodial and REO properties are appropriately managed and maintained. The goal of property management is to protect the tenants and the interests of the Government. Consequently, Agency efforts to secure and manage these properties are to begin immediately once the following occurs:

- The property title is conveyed to the Agency; or
- The Agency determines property is abandoned.

### **14.4 MANAGEMENT METHODS AND CONTRACTS**

The Agency has the authority to contract with qualified management entities to perform the management activities discussed in this section. The extent of management is dependent on factors such as:

- The nature of the project;
- The project's location;
- The condition of the project;
- Necessary maintenance; and
- Availability of acceptable management entities.

In some cases, the existing management agent can be maintained; in others, the Agency must hire a new management agent to provide all property management services on behalf of the Agency.

#### **A. Selecting a Management Contractor**

Management contractors are selected in accordance with Agency procurement procedures outlined in RD Instruction 2024-A. Alternative methods for selecting a management contractor may be established by the Agency if it is in the best interest of the Government. Alternative selection methods require advice from the Office of General Counsel (OGC). Prior to obtaining a management agent for custodial property, the Agency should determine if court approval is required.

## **B. Management Contract Requirements**

At a minimum, management contracts must:

- Allow for properties to be added or removed from the contractor's assignment, whenever necessary, such as when a property is taken into custody, acquired, or sold during the period of a contract;
- Prohibit the contractor or associates of the contractor from performing repairs if the executed agreement calls for the contractor to provide detailed repair specifications;
- Require the management agent to hold security deposits in trust and handle them in accordance with the tenant's lease or occupancy agreement; and
- Require compliance with environmental laws.

The management agent must develop an Affirmative Fair Housing Marketing Plan (AFHMP), in accordance with RD Instruction 1901-E. The AFHMP must be submitted to the loan office. The AFHMP must receive written approval from the Civil Rights Coordinator in the Rural Development State Office. *Form RD 1955-62, Request for Contract Services for Custodial/Inventory Property or Program Services* is a sample statement of work for a project management contract.

## **C. Management Costs**

The costs of management services related to REO property will be paid out of income generated by the housing project being managed. If income from the housing project is inadequate to pay for management services, Agency resources may be used to pay for management services.

## **D. Project Funds**

When a property becomes REO, the Agency transmits operating and maintenance, reserve accounts, and escrow funds to the St. Louis Office. The former borrower's account is credited for these amounts. If there is a surplus of funds, the St. Louis Office will forward a refund check payable to the former borrower.

# **14.5 TAKING POSSESSION**

## **A. Taking Custodial Possession**

The Agency is authorized to take custody of security property when a borrower becomes incapacitated, dies, or has abandoned a security property. When the Field Office has attempted for more than 30 days and is unable to contact a borrower, the Loan Servicer must inspect the property to determine its status and attempt to locate and contact the borrower. The Field Office should seek the advice of OGC in making its determination and recommendation.

### ***1. Determining Whether a Property Has Been Abandoned***

The determination that a property has been abandoned requires significant investigation and documentation. In addition to the actions described in this paragraph, Field Office Staff must follow any procedures required by state or local law in order to confirm the determination of abandonment and to take custodial possession. The Agency cannot act to obtain possession of a property as long as a lien holder has legal possession of the property, or the borrower or the lien holder has a right to lease proceeds. Field Office Staff cannot classify a property as “abandoned” prior to documenting attempts to:

- Determine that there is no clear evidence of management presence at the project. For example, a site visit indicates that tenants are unable to contact borrower or property manager regarding repairs or rent collection, the project has fallen into disrepair due to a total lack of maintenance activities, or the Loan Servicer cannot locate the borrower or property manager;
- Locate the borrower through sources including, but not limited to, tenants, the postal service, utility companies, business associates, relatives, insurance agents, and tax authorities; and
- Determine whether there are other liens on the property. If liens exist, whether the lien holder(s) are willing to work with the Agency to secure the property.

### ***2. Recommendation for Taking Custody***

The Field Office will report its findings to the State Director. The report will recommend that a property be taken into custodial possession if it appears that the property has been completely abandoned and the Agency needs to assume responsibility for it to protect the security. Alternatively, if the Field Office reports that the property is occupied, the report will give details as to whether the occupants are under a lease or are unauthorized. The Field Office will provide any other relevant details and recommend future action. When appropriate, the State Director will authorize the Field Office to take custodial possession. When the Field Office believes that a property is abandoned, it must prepare a report that provides evidence of a property’s abandonment. The report is placed in the borrower’s case file, and a copy of the report is forwarded to the State Office.

### ***3. Liquidation***

The need to take custodial possession of a property may occur before or after a loan has been accelerated. If liquidation is not already in progress, taking custodial possession should initiate the process. Field Office Staff are responsible for conducting liquidation activities.

### **B. Acquiring an REO Property**

When a Field Office acquires a property, Field Office Staff must notify the State Director. An additional REO case file should be created from the original case. The

REO case file should include the property title, recent inspection reports, appraisals, environmental reviews, and any other documentation related to the physical condition or value of the property. No information related to the borrower is needed in the REO file.

#### **14.6 INSPECTING AND SECURING CUSTODIAL AND REO PROPERTY**

Once REO property is acquired, Field Office Staff must inspect the property to determine what steps need to be taken to further ensure its security and maintain its value. The inspection will allow Field Office Staff to designate the property as program or non-program and evaluate the need for repairs.

##### **A. Inspecting and Classifying the Property**

Field Office Staff must perform an on-site field inspection of REO property to:

- Determine repair needs;
- Gather information to assist in completing the environmental review;
- Assist in updating the due diligence report and appraisal, as necessary; and
- Take necessary actions to secure and maintain the housing project.

Based on the results of the inspection, Field Office Staff designate REO property as program or non-program property after considering factors such as size; design; possible health and/or safety hazards; and obsolescence due to functional, economic, or locational conditions. REO property may be sold as non-program property if any of the following conditions exist:

- The housing project does not meet Agency requirements and the cost of bringing the housing into compliance is determined, by the Agency, to be economically unfeasible based on the amount of funds available to the Agency and the housing needs in the market area where the housing is located;
- Attempting to sell the property on program terms is not in the best interest of the Federal Government; or
- Hazardous substances or petroleum products have been released on the property and the cost of cleanup is estimated to exceed the dollar value the Agency will recover through sale of the property.

REO property in an area no longer designated rural is treated as if it were still in a rural area.

## **B. Securing Custodial and REO Property**

When the Field Office assumes management responsibility and takes possession of REO or custodial property, immediate steps must be taken to inspect and secure the property whether by Field Office Staff or management contractor.

### ***1. Physical Security of Vacant Properties***

If the property is vacant, it should be locked or otherwise secured and a no trespassing notice should be posted. For REO only, after an inspection determines utility systems are in safe operable condition, utility companies should be contacted to maintain or reinstate utility service. An inventory should be made of any nonsecurity personal property left on the premises and efforts made to identify any owners or lien holders.

### ***2. REO Properties Occupied by Tenants***

REO property may be occupied by tenants with leases executed by the former borrower. The Agency may require tenants to sign a new lease, but if it is in the best interest of the Government, the Agency may honor existing leases. The Agency may evict unauthorized tenants.

When units in an REO property are under an existing lease and the Agency decides to continue the lease, the tenant must be notified, in writing, that the Agency has acquired the former owner's rights under the lease and that all payments should be remitted to the Agency's management agent. If a lease is to be terminated, the tenant must be notified, in writing, that their lease is being terminated in 30 days, and they must vacate. The OGC should be contacted for advice and assistance prior to evicting a tenant in order to obtain possession of an REO property.

Rent payments due and payable before the date the Agency acquired the property are applied to the borrower's account. Any surplus funds will remain with the project.

## **14.7 DISPOSITION OF NONSECURITY PROPERTY**

The Agency has no legal claim to any nonsecurity, owner, or tenant property left on the premises. State or local law may affect procedures for disposing of personal property left on the premises of an REO or custodial property. Field Office Staff must comply with any state or local requirements, as well as the procedures discussed in this paragraph. If the owners or lien holders of any personal property that remains custodial or REO property can be identified and located, Field Office Staff must offer them a reasonable opportunity to remove the property. Any conversations with the owner of the property should be documented and placed in the case file.

### **A. Custodial Property**

The Agency may remove any nonsecurity personal property from custodial properties as long as such property can be safely stored. Personal property cannot be removed and stored if:

- The storage facility presents a hazard to the security of the property, such as a leaking roof or unsecured area, which allows access to the property by unauthorized persons; and
- The personal property itself presents a hazard, such as flammables or explosives. Hazardous materials must be managed in compliance with Paragraph 14.10.

## **B. REO Property**

### ***1. Notice to Owners or Lien Holders of Personal Property***

If the property is not retrieved after the initial notification, a certified letter should be sent, return receipt requested, notifying the owner or lien holder of the date on which the Agency will dispose of the property, and that the property may be retrieved before the disposition upon payment of any expenses incurred by the Agency related to the personal property, such as advertisement or storage.

### ***2. Disposal of Unclaimed Property***

The Field Office will dispose of unclaimed property in accordance with its value and conforming with local practices. For example, if there are items of significant value, an advertisement may be placed in the local newspaper. Unclaimed tenant property will be disposed of in accordance with the terms of the lease.

### ***3. Income from Disposition***

Proceeds from the sale of items under lien should be paid to any owner or lien holder after deducting Agency selling expenses. If there is no known owner or lien holder, proceeds are applied to the REO account.

## **14.8 TAXES AND INSURANCE**

### **A. Taxes**

REO property is subject to taxation by state and local political jurisdictions in the same manner and to the same extent as other properties, unless state law specifically exempts property owned by the Federal Government. If a jurisdiction changes the law to begin taxing Government-owned property, only taxes accrued after the effective date of the change will be paid. Field Office Staff must notify the taxing authority, in writing, when title to real estate is acquired and provide the Field Office address to which tax bills should be sent during Agency ownership.

If the value of the property is significantly less than the value at which it is being taxed, as soon as it is acquired the Agency may request a new assessment by the local taxing authority. Management contracts between the Agency and property managers may include provisions allowing the management agent to request a new tax assessment.



If property is acquired subject to a prior lien, before the Agency pays taxes, Field Office Staff must contact the prior lien holder to determine if that lien holder will pay the taxes.

Taxes on program property are paid when due. Taxes on non-program property may be deferred until the property is sold if the taxes that accrue before disposition exceed the value of the property. If the taxing authority schedules a tax sale before the Agency can sell the property, Field Office Staff will determine what is in best interest of the Government. To make this determination the Field Office Staff will calculate the net recovery value that would result from paying the taxes and continuing sales efforts. This calculation will be compared with the net recovery value if the Agency allowed the property to be sold for delinquent taxes. (See Chapter 12 for a more detailed discussion of net recovery value.)

## **B. Insurance**

### ***1. Custodial Property***

Insurance on custodial property will be maintained per program instructions.

### ***2. REO Property***

Insurance will not be canceled when property is acquired. However, the Agency will pay additional premiums to continue coverage only when it is in the best interest of the Federal Government. If it is necessary to file a claim, Field Office Staff should submit the claim and direct that insurance proceeds be forwarded to the St. Louis Office.

## **14.9 PHYSICAL MAINTENANCE AND REPAIR**

Custodial property will be maintained and repaired only as needed to protect the security of the property and to prevent deterioration. In the case of historic buildings, such repair and maintenance will be done in a manner that preserves the design integrity. Consult with the SEC and/or SHPO to resolve any issues in this regard. In the event of damage or theft, the procedures described under subparagraph A of this section should be followed.

All contracts for management or lease of REO property will contain provisions that protect environmental resources determined to be present in keeping with Section 3, Environmental Requirements

REO property designated to be sold as program property must be repaired, as necessary to meet the Agency's requirements for decent, safe, and sanitary housing.

REO property designated to be sold as non-program property will be managed in a manner that:

- Removes health and safety hazards;
- Prevents deterioration; and

- Complies with state and local requirements for the sale of the property.

Additional repairs or renovations will only be made if they will enhance the sale value of the property and are determined, by the Agency, to be in the best interest of the Government.

#### **A. Vandalism and Theft**

Field Office Staff will report any willful damage or theft to the local law enforcement authorities and in whatever manner necessary, to attempt to resolve the incident, including signing complaints and testifying at hearings or trials.

Field Office Staff should send a written report of the incident to the State Director and a copy to the Regional Office of the Inspector General (OIG). The State Director, in consultation with the OGC as necessary, will advise and assist the Field Office Staff.

Damage to REO program property as a result of vandalism and theft may be repaired as necessary to continue marketing. Repairs may include cost-effective improvements to minimize the likelihood of future damage, such as increased lighting, security fencing, and removal of shrubs that limit visibility. Non-program property should be broom swept, but generally will not be repaired unless necessary to prevent deterioration. Custodial property should be repaired only to protect the security and prevent deterioration.

#### **B. Off-Site Repairs or Improvements**

The Agency may require off-site repairs or improvements to protect property from damage, to protect the Government's interest or enhance the marketability of property. Off-site improvements must be approved by the State Office. To obtain approval, Field Office Staff must prepare a justification that demonstrates failure to make the improvements would likely result in a loss in property net recovery value greater than the expenditure, and that there are no other feasible means with state or local entities to accomplish the same result.

To obtain off-site improvements, the Agency may enter into a contract with a private company or enter into a cooperative agreement with a state or local government, or other entity to obtain repairs or improvements. Under a cooperative agreement, the entity will provide money, property, services, or other items of value to the entity to accomplish a public purpose. While cooperative agreements are not a contract action, the authority, responsibility, and administration of a cooperative agreement must be consistent with contract action. OGC should be consulted when a cooperative agreement is considered.

### **14.10 SPECIAL USES OF REO**

#### **A. Transitional Housing for the Homeless**

By a Memorandum of Understanding (MOU) between the Agency and the Department of Health and Human Services, REO property that is not under lease or sales

agreement may be leased to public bodies and nonprofit organizations to provide transitional housing for the homeless.

**B. Mineral Leases**

When it is in the best interest of the Government, the Agency may lease mineral rights associated with REO property. OGC should be contacted for assistance in preparing the lease agreement. The appropriate level of environmental review must be completed prior to any agreement to lease mineral rights. Since such actions may be controversial and may have the potential for significant impact on the environment, prior consultation with the State Environmental Coordinator is required.

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## **SECTION 2: DISPOSITION OF REO PROPERTY [7 CFR 3560.503]**

### **14.11 OVERVIEW**

The Agency will make every effort to sell REO properties quickly and at the best possible price. Whenever possible, preference will be given to selling REO program property to a program borrower. Preference will be given to offers from bidders who are determined eligible by the Agency to purchase REO property designated to be sold as program property.

#### **A. Sale Methods and Pricing**

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

REO properties are initially priced for sale at their present market value, as determined by appraisal. Administrative price reductions may be taken over time to facilitate sale of the property (see Paragraph 14.14 for a discussion of price reduction). 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 14.15, must be prepared for REO multi-family housing properties of four or more units.

#### **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 procedures described in HB-1-3560.

Non-program credit terms are offered when the buyer is not eligible for a Section 514 or 515 loan, or the property does not qualify as a program property. Section 5 provides instructions for credit sales on non-program terms. Buyers who receive financing on non-program terms must be advised that they are not eligible for interest credit or rental assistance.

#### **C. Warranty**

The Agency does not provide a warranty of either the title or the physical condition of any REO property.

### **14.12 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 in accordance with the procedures described in Chapter 4, Notice of Funding Availability (NOFA) and Initial Application Process. 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 related 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 (*TSQ*) as described in Paragraph 14.26. This will normally be completed at the same time as, or prior to, 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, cleanup of hazardous material or lead-based paint, or there has been a change in market conditions. Refer to Section 3 for detailed environmental requirements.

### **B. Sales Schedules and Administrative Price Reductions**

The sale of REO program property is restricted to program-eligible buyers when a property is offered for sale and any time an administrative price reduction is taken. Exhibit 14-1 provides the sales schedule for program property. The sales price is fixed when a sales contract is executed and does not decrease further based upon scheduled price reductions.

<b>Exhibit 14-1</b>	
<b>Sales Schedule for Multi-family Housing REO Property Program Property</b>	
<b>Days from Initial Offer</b>	<b>Action</b>
Day 1	Initial offer (appraised as-is value with subsidy).
Day 45	If no acceptable offer, reduce price by 10 percent and offer again.
Day 91	If no acceptable offer, reduce price by another 10 percent or use other methods (additional 10 percent price reductions allowable after 45 days)
Day 180	If no acceptable offer, submit REO case file with documentation of marketing efforts to State Office for further advice on sales incentives or to authorize sealed bid/auction. Loan Servicer may reevaluate whether the project should be classified as a program property.

Exhibit 14-2 provides the sales schedule for non-program properties. If a program property has not sold following active marketing efforts and two price reductions, Field Office Staff will reevaluate the property to determination if it should continue to be marketed as a program property. The reevaluation process may include an updated appraisal.

<b>Exhibit 14-2</b>	
<b>Sales Schedule for Non-Program REO Property</b>	
<b>Days from Initial Offer</b>	<b>Action</b>
Day 1	Initial offer (appraised as-is value without subsidy).
Day 45	If no offer, reduce price by 10 percent and offer again. Additional 10 percent price reductions are allowable after 45 days.
Day 91	If no acceptable offer, reduce the price by another 10 percent or use other sale methods.
Day 180	Submit REO case file with documentation of marketing efforts to State Office for further advice on sales initiatives to authorize sealed bid/auction.

**14.13 MARKETING AND ADVERTISEMENT**

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

### **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.

### **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 14-3 highlights these requirements, see RD Instruction 1940-I for additional information.

<p style="text-align: center;"><b>Exhibit 14-3</b></p> <p style="text-align: center;"><b>Truth in Lending Highlights</b></p> <ul style="list-style-type: none"><li>• Advertisements that state specific credit terms must state only terms that will actually be offered.</li><li>• Any finance charge listed must be stated as an annual percentage rate.</li><li>• Key terms related to financing used in the advertisement must be defined</li></ul>
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### **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 an advertisement on the Agency's multi-family housing REO Web site at <https://mfhreo.sc.egov.usda.gov>. This site allows staff to upload, modify, and delete properties. The general public will view multi-family housing REO properties for sale at: <http://www.resales.usda.gov>;
- Posting advertisements in public locations accessible to prospective purchasers, 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.

Advertisements must include the following:

- Appropriate language, stressing the need for potential buyers to complete and submit an application and other required documentation;



- Any restrictive-use requirements that will be attached to the project and added to the property's title;
- Sale price; and
- Date, time, and location of drawing. The date and time must allow adequate time for advertising and review of application packages.

#### **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 in a timely manner. Of particular concern are:

- Properties acquired more than 90 days ago that have not yet been made available for sale;
- Program properties that have been available for sale for 6 months or more and are not under contract;
- Non-program properties that have been available for sale for 4 months or more and are not under contract; and
- Properties that have been under contract for more than 60 days and have not closed.

### **14.14 SPECIAL MARKETING TECHNIQUES**

#### **A. Buyer Incentives**

The State Director may authorize buyer incentives when Field Office 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 the payment of closing costs, may be appropriate for any property. Amortization schedules longer than the standard term may be offered for non-program 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.

## **14.15 REO PROPERTY NOT MEETING PHYSICAL STANDARDS**

When REO property does not meet the Agency's dwelling standards, and making repairs that will allow the property to meet these standards is not economically feasible for the Government, the property is listed, advertised, and sold with specific occupancy restrictions.

Housing that does not meet the Agency's dwelling standards may still be considered decent, safe, and sanitary 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;
- Meets the Agency's thermal performance standards; 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 the new owner from allowing occupancy of affected residential units until it those units meet the Agency's dwelling standards, as discussed in Chapter 3 of HB-1-3560. Property that is not decent, safe, and sanitary must still meet the Agency's environmental requirements, including the management of hazardous substance requirements discussed in Paragraph 14.10.

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 Office 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, Multi-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 decent, safe, and sanitary standards, using language similar to the following:

“Pursuant to Section 510(e) of the Housing Act of 1949, as amended, 42 U.S.C. 1480, RHS has determined dwelling unit or units on this property inadequate for residential occupancy. The quitclaim deed by which this property will be conveyed will contain a covenant excluding the inadequate residential unit(s) from residential use until the dwelling unit(s) is repaired or renovated as follows:” (insert the items necessary for the property to meet decent, safe, and sanitary standards, clearly indicating the inadequate unit(s) and necessary repairs for each unit).

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 decent, safe, and sanitary standards.

### **B. Quitclaim Deed Restrictive Covenant**

The quitclaim deed must contain a covenant restricting residential occupancy if units within the project fail to meet the Agency’s dwelling standards. The covenant must describe the conditions that prohibit occupancy of specific units and specify the improvements that are necessary for the property to fully comply with Agency standards for housing that is decent, safe, and sanitary. The covenant may use 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, 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 inadequate dwelling unit(s) 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(s) 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 decent, safe, and sanitary standards)

### **C. Release of Restrictive Covenant**

When the owner requests a release of the restrictive covenant, the Agency inspects the property. The Agency will release the covenant if the conditions that prohibited occupancy have been corrected; the specific items necessary for the property to meet decent, safe, and sanitary standards have been provided; or the structure necessitating the restrictive covenant has been removed from the site. Restrictive covenants, established as environmental mitigation measures, will not be released without the concurrence of the State Director.

### **14.16 DISPOSITION BY PUBLIC DRAWING**

Public drawing is the preferred and most common method of sale for REO properties. Exhibit 14-4 outlines the public drawing process. Use of any other sale method requires approval from the State Office.

<b>Exhibit 14-4</b>	
<b>The Disposition by Public Drawing Process</b>	
Step 1	The property is offered for sale at market value. Loan Servicer completes <i>Form RD 1955-40, Notice of Real Property for Sale</i> .
Step 2	The Loan Servicer advertises the property. Contacting known interested parties is part of advertising efforts. Program properties are offered exclusively to program applicants for the first 45 days, after which the property is available to anyone. The Agency may accept offers from program applicants prior to the advertised drawing date. Non-program purchase offers cannot be accepted prior to the drawing date.
Step 3	Offers are accepted and stamped with the date and time of receipt.
Step 4	Agency reviews offers. If only one offer is received and the offer meets Agency requirements, that single offer may be accepted. If more than one offer is received, the Agency will accept the offer that is in the best interest of the Government. If acceptable offers are comparable, these will be sealed, placed in a receptacle, and drawn sequentially.
Step 5	If no acceptable offer is received, reduce price by 10 percent or use other incentives. Repeat steps 1 through 4.
Step 6	If no acceptable offer is received, submit REO case file with documentation of marketing efforts to the State Office for further advice on sales incentives or to authorize sealed bid/auction. Loan Servicer may reevaluate whether the project should be classified as a program property.

**A. Listing the Property**

REO property is offered for sale using *Form RD 1955-40*. The date indicated on *Form RD 1955-40* is the effective date of the offer to sell. An offer to purchase 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 Office Staff determine 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 case 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 RD 1955-45, Standard Sales Contract, Sale of Real Property of the United States*. Offers received in any other form must be returned to the offeror. Any offer to buy that is contingent upon Agency credit must be accompanied by a completed *Form SF 424, Application for Federal Assistance*. Applications are considered completed and acceptable only if they include the required attachments. To establish borrower eligibility, the following attachments must be included when the application is submitted:

- Financial statements for the past two years;
- Credit report for each general partner (if limited partnership) or each officer (if corporation);
- Proposed limited partnership agreement and certificates of limited partners, if applicable;
- Tax-exempt ruling from the IRS designating the borrower organization as a 501(c)(3) or 501(c)(4) if applicant is nonprofit (if designation is pending, a copy of the designation request);
- Mission statement;
- Evidence of organization under state and local law or copies of pending applications; and
- List of board members

Those requesting Agency credit must meet the applicant eligibility requirements as outlined in Paragraph 4.16 of HB-1-3560.

## **C. Receiving and Considering Offers**

Each offer must be date stamped when it is received. Offers received on the same day will be selected for consideration by lot. Names will be placed in a receptacle, drawn, and numbered sequentially. Offers drawn after the first are held as backup and the offeror so notified.

The Agency selects the first minimum acceptable offer received and executes *Form RD 1955-45*. The form is then sent to the bidder along with a letter to indicate acceptance of the offer. A letter is also sent to notify all unsuccessful bidders of the status of their offers.

## **D. 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 backup 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 Field Office where it will in turn be forwarded to the St. Louis Office for application to the General Fund.

## **14.17 DISPOSITION BY SEALED BID OR AUCTION**

Any use of the sealed bid or auction methods must be authorized by the State Director. Program properties may be sold using these methods only after regular sales efforts have been unsuccessful for six months. Either method may be used as the initial sale effort for non-program 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 Office Staff must develop and document the recommendation for the minimum acceptable bid or sales price using the net recovery value worksheet provided in Chapter 12, **Attachment 12-A**.

### **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 and describe how bids are to be made, the required percentage of bid deposit, the maximum credit terms, the cash preference percentage described in subparagraph C.3 of this section, and other pertinent information, such as a notice of special flood or mudslide hazard area or wetland and any related use restrictions.

### **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 of 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 non-program 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. If the bidder wants to withdraw their bid, this must be done prior to the drawing date. The bid opening will be held publicly at the place and time specified in the notice with at least two 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 two identical bids for a program property, program-eligible purchasers will be selected before bidders who are not program-eligible.

## ***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 14.18. 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 Office Staff also must notify unsuccessful bidders in writing 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 Office Staff must execute *Form RD 1955-46* and send a written acceptance of the bid.

## ***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 the St. Louis Office 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 14.18.

#### **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 RD 1955-46* 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 purchase offer. This fee will be waived for program-eligible 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 program-eligible purchasers. This may include submission of letters of credit or financial statements prior to the auction. The auctioneer should not accept bids that 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 in obtaining an executed bid at the predetermined minimum.

##### ***4. Purchaser's Default***

Upon purchaser's default, the Field Office Staff will remit the bid deposit to the St. Louis Office as a miscellaneous collection. The property may then be disposed of through a negotiated sale.

#### **14.18 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* 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.

#### **14.19 DISPOSAL OF PROPERTY FOR SPECIAL PURPOSES**

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.

#### **14.20 DISPOSAL AS CHATTEL OR SALVAGE**

If the Agency is unable to sell non-program 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 RD 1955-47* 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 is offered for sale as non-program REO property.

If REO property is a vacant lot, the lot is offered for sale as non-program property.

## **SECTION 3: ENVIRONMENTAL REQUIREMENTS**

### **14.21 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 1940-G prior to determining the disposition of the property. The proposed disposal of REO property will normally qualify as a categorical exclusion. However, an environmental assessment and an environmental impact statement (EIS), when deemed necessary, is required for any proposed disposal of REO property that meets one of the following criteria:

- The Agency has evidence that the transaction would result in a change in use of the REO property (for example, residential to commercial);
- The transaction is controversial for environmental reasons;
- The original environmental assessment for the project contains mitigation measures requiring an on-going managerial action (such as preservation of an historic building or setbacks from wetlands);
- The transaction affects environmental resources identified in 1940-G, or
- The property is contaminated with hazardous substances or petroleum products.

This section summarizes the basic environmental information that pertains to disposal of REO properties. For more detailed information and assistance, refer to RD Instruction 1940-G and the State Natural Resource Management Guide.

### **14.22 PROPERTY LOCATED WITHIN A SPECIAL FLOOD OR MUDSLIDE HAZARD AREA OR CONTAINS WETLANDS**

Prospective buyers will be provided written notice that the REO property is in a special flood or mudslide hazard area.

*Form RD 1955-46*, "Invitation, Bid, and Acceptance, Sale of Real Property of the United States" must include notice of special flood or mudslide hazard areas, wetlands and other environmental use restrictions. Prospective purchasers, auctioneers, and brokers must be provided a copy of this information.

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 relevant restrictions. Use restrictions will relate to the use of the property by the purchaser and any successors as determined by the Agency. See 14.28.

### **14.23 COASTAL BARRIER RESOURCES SYSTEMS**

REO property located within a Coastal Barrier Resource System (CBRS) will not be sold until the Agency completes consultation with the USFWS Regional Director, and agreement is reached that the proposed sale does not violate the provisions of the CBRS.

No continued Federal financing is permitted for REO property located within a CBRS.

### **14.24 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 must consult with the SHPO. This consultation will establish any necessary restrictions on future use of the property to maintain compatibility with preservation objectives per 14.28.

A property that is listed or eligible for listing on the National Register of Historic Places may be leased or operated by management contract, the lease or management contract will contain provisions that the use will preserve property's condition and historic character.

### **14.25 UNDERGROUND STORAGE TANKS (UST)**

USTs found on the property will be investigated to determine the contents of the tank and whether the tank has leaked or is leaking. Investigations will include the extent of contamination and methods of remediation. Such investigations will be undertaken by persons authorized by state law and provided to the appropriate state regulatory agency for consultation on appropriate steps to take. The report will be made a part of public information provided to prospective buyers and lenders. Notice of cleanup will be made a part of covenants to the deed to assure notice to future buyers as further discussed at 14.28. When a UST is leaking, the tank will be removed and the areas of contamination cleaned up in accordance with state regulations. If the UST is replaced, the work will be in accordance with state and local requirements

### **14.26 MANAGEMENT OF HAZARDOUS SUBSTANCES AND PETROLEUM PRODUCTS**

All property considered for disposal or lease must be evaluated for possible hazardous substance contamination as part of the Agency's environmental due diligence. The minimum level of documentation of due diligence is the Transaction Screen Questionnaire (TSQ), which will be prepared by the Agency or an environmental professional under contract to the Agency. If the TSQ indicates the possibility of contamination a Phase I Environmental Site Assessment (ESA) will be prepared to determine the types of contamination present. If determined necessary by the ESA, a Phase II ESA will be prepared to determine the extent and potential costs for remediation. An environmental professional will prepare the ESA. The SEC should be consulted during this process for guidance and assistance in review and acceptability of the reports.

Environmental due diligence is normally conducted prior to the Agency taking action to foreclose and the reports previously prepared should be reviewed and supplemented as necessary prior to sale or lease.

## 14.27 LEAD-BASED PAINT

All projects constructed prior to 1978 will be assessed for the presence of lead-based paint in accordance with the Rural Development adopted portions of the HUD “Lead Safe Housing Rule.” To assist staff in determining the requirements for compliance the “Lead-Based Paint Compliance Key” is available at the RHS Intranet site. This automated tool should be run and a copy saved for records and any requirements for investigation and remediation included in the scope of work for repair prior to sale. The costs of the lead-based paint work should also be included in the appraisal of property value.

Prospective purchasers must be notified of the results of the inspection and any remediation efforts. **Attachment 14-A** is a sample disclosure format to provide purchasers with information about known lead-based paint hazards in the property.

## 14.28 PROTECTIVE COVENANTS RESTRICTIONS AND EASEMENTS

The Agency has a responsibility to take actions to protect environmental resources on REO property. Protective actions or mitigation measures on future use of the property may take the form of covenants, restrictions or conservation easements and will be filed with the deed. Such protection may be used to limit use of and to protect:

- Floodplains;
- Wetlands;
- Coastal barrier systems;
- Historic and cultural resources;
- Endangered or threatened species;
- Critical habitat;
- Wilderness areas;
- 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
- Other resources identified in 1940-G or protected under state law.

The appropriate state and Federal agencies should be consulted for determinations of effect. The advise of the State Environmental Coordinator should be sought if it appears that

disposal of the REO property may affect any of these resources and the environmental review raised as indicated in 1940-G.

Examples of use restrictions include prohibition of draining, filling or building in a floodplain or wetland area, maintaining the property in keeping with results of consultation with the SHPO or notifications on hazardous material remediation on the site.

In any case in which a property has been contaminated with hazardous materials or petroleum products, notice shall be provided to prospective buyers and a covenant attached to the deed providing notice to future buyers. The notice shall include all findings and actions to cleanup taken by the Agency. Any information from Agency site reconnaissance, investigations and clearances provided by independent environmental professionals will be made a part of presale notices and covenants or restrictions in the deed. In addition, the Agency is obligated to cleanup any materials found on site in the future provided that the materials were in place prior to the date of conveyance. Covenants and restrictions to address the specific conditions will be developed with the assistance of OGC, the SEC and National Office environmental staff.

## SECTION 4: PROCESSING AND CLOSING

### 14.29 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 of HB-1-3560. 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.

### 14.30 SPECIAL NOTICES AT SALE

In accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, sellers of housing built before 1978 receiving Federal assistance 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) disclosure of any lead-based paint hazard or a statement that the Agency has no knowledge of such 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 **Attachment 14-A**.
- Notice shall be provided to prospective buyers of all hazardous material activities and findings. This shall include access to records of Agency site reconnaissance and investigations by environmental professionals. If hazardous materials have been found in performance of due diligence, notification of remediation results will be provided. Covenants or restrictions to the deed will be developed with the assistance of OGC to address the specific conditions. The National Office environmental staff and the SEC should be consulted in the preparation of all environmental covenants or restrictions.

### **14.31 INSPECTION**

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

### **14.32 PRORATING REAL ESTATE TAXES AND/OR ASSESSMENTS**

When REO property is subject to taxation and/or assessment, they are prorated 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 that 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.

### **14.33 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.

### **14.34 TRANSFERRING TITLE**

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

### **14.35 REPORTING SALE**

When the transaction is closed and the conveying instrument has been delivered, the disposition is recorded in the REO system. Real property that 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 the St. Louis Office to be credited to the General Fund.



## SECTION 5: PROCESSING CREDIT SALES ON NON-PROGRAM TERMS

### 14.36 OVERVIEW

The sale of non-program properties is conducted in a manner similar to other sales; however, there are some differences in the terms of the sale, the processing of the offers, loan closing, and the treatment of the property after the sale is complete. This section highlights these differences. See HB-1-3560 for processing credit sales for program properties.

### 14.37 TERMS OF A NON-PROGRAM CREDIT SALE

The following provisions apply to credit sales on non-program terms.

- **Interest rate.** The Section 515 interest rate plus 0.5 percent will be charged on all types of housing credit sales. Refer to Exhibit B of RD Instruction 440.1 (available in any Field Office) for interest rates. Loans made on non-program terms will be equal to the lesser of the prevailing interest rate at the time of loan approval or loan closing; and
- **Term of note.** The note amount will be amortized over a period not to exceed 10 years. If the State Director determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

Agency loans to finance the purchase of non-program REO property are subject to the availability of funds.

Each tenant in an REO property designated to be sold as a non-program property will be notified by the Agency, in writing, of the housing project's non-program designation and will be given an opportunity to obtain a Letter of Priority Entitlement (LOPE).

### 14.38 ACCEPTING OFFERS

The sale of a non-program property is similar to other sales. Field Office Staff publicize the sale, accept bids, and choose a bid from the first acceptable bids received.

- **Documenting offers and acceptance.** Field Office Staff must use *Forms RD 1955-45* and *1955-46*, as appropriate, to document the offer and acceptance. Field Office Staff must accept the contract prior to processing a request for credit on non-program terms.
- **Cash sales.** If the offeror can purchase the property without Agency assistance, Field Office Staff will simply collect the purchase price (less any deposits) and deliver the deed to the purchaser.

- **Purchase with non-program credit.** Purchasers requesting credit on non-program terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness:
  - ◇ The borrower may submit the standard forms used to process program applications or comparable documentation. Field Office Staff may request additional information as needed to support loan approval.
  - ◇ Field Office Staff will order individual credit reports for each individual applicant and each principal within an applicant entity. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity.

### 14.39 APPROVAL

Field Office Staff must use *Form RD 3560-51* to approve a credit sale even though no obligation of funds is involved. For guidance on how to complete the form, see the special instructions on the FMI pertaining to non-program credit sales.

The Loan Servicer must review *Form RD 1910-11* with the applicant, and the form must be signed by the applicant.

### 14.40 CLOSING SALE

The Loan Servicer will provide the closing agent with necessary information for closing the sale. Title clearance, loan closing, and property insurance requirements for a credit sale are similar to those for program loans. As for program sales, OGC assistance will be requested to provide closing instructions.

The following are the highlights of the closing process for non-program sales:

- **Closing costs.** The purchaser will pay their own closing costs. Earnest money, if any, will be used to pay purchaser's closing costs with any balance of closing costs being paid by the purchaser. Any closing costs which are legally or customarily paid by the seller will be paid by the Agency from the down payment;
- **Down payment.** A down payment of not less than 10 percent of the purchase price is required at closing and will be remitted by the Field Office Staff;
- **Modification of security instruments.** Field Office Staff must modify security instruments as necessary:
  - ◇ On the *Form RD 3560-52, Promissory Note* and/or security instrument (mortgage or deed of trust) any covenants relating to graduation to other credit, restrictive-use provisions, personal occupancy, inability to secure other financing, and restrictions on leasing may be deleted; and

- ◇ Deletions are made by drawing a line through the specific inapplicable language. The borrower and an Agency representative must initial the changes.
- **Purchase of more than one property.** When more than one property is bought by the same buyer and the transactions are closed at the same time, a separate *Form RD 3560-52* will be prepared for each property, but one mortgage will cover all the properties; and
- **Reporting sale.** When the transaction is closed and the conveying instrument has been delivered, Field Office Staff will report the sale like all other sales. They will process *Form RD 3560-19, Status of REO Property*, in accordance with the respective FMI.

#### 14.41 SERVICING THE NON-PROGRAM LOAN

Credit sales on non-program terms will be classified as non-program loans and serviced accordingly. The project is not subject to any rent, occupancy, or other program requirements.

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## ATTACHMENT 14-A

### LEAD-BASED PAINT DISCLOSURE FORM

#### **SAMPLE Disclosure Form for Target Housing Sales** **Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards**

**This form is also available at HUD's Lead Safe Housing website.**

#### **LEAD WARNING STATEMENT**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

#### **SELLER'S DISCLOSURE (INITIAL)**

\_\_\_\_\_ (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

- Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

\_\_\_\_\_  
\_\_\_\_\_

- Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing

\_\_\_\_\_ (b) Records and reports available to the seller (check one below):

- Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

\_\_\_\_\_  
\_\_\_\_\_

- Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

\_\_\_\_\_ (c) Purchaser has received copies of all information listed above.

\_\_\_\_\_ (d) Purchaser has received the pamphlet *Protect Your Family From Lead in Your Home*.

\_\_\_\_\_ (e) Purchaser has (check one below):

- Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**AGENT'S ACKNOWLEDGMENT (INITIAL)**

\_\_\_\_\_ (f) Agent has informed the seller of the seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

**CERTIFICATION OF ACCURACY**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information provided by the signatory is true and accurate.

_____	_____	_____	_____
Seller	Date	Seller	Date
_____	_____	_____	_____
Purchaser	Date	Purchaser	Date
_____	_____	_____	_____
Agent	Date	Agent	Date