RD AN No. 3861 (1980-D)
May 15, 2003

TO: State Directors
Rural Development

ATTENTION: Rural Housing Program Directors,
Rural Development Managers and
Community Development Managers

FROM: Arthur A. Garcia ***(Signed by Arthur A. Garcia)***
Administrator
Rural Housing Service

SUBJECT: Single Family - Guaranteed Rural Housing (SF-GRH)
Lender Real Estate Owned Property Disposition Plans

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the provisions of RD Instruction 1980-D regarding the content and submission requirements for SF-GRH lender real estate owned (REO) property disposition plans.

COMPARISON WITH PREVIOUS AN:

This AN replaces and is substantially similar to AN #3544 issued on May 10, 2000.

BACKGROUND:

Due to a lack of specificity in RD Instruction 1980-D, Section 1980.376(a)(1)(ii), there has been some inconsistency in the required content and submission of a lender's plan to dispose of acquired property that secured a SF-GRH loan. RHS and the lender have a

EXPIRATION DATE: FILING INSTRUCTIONS:
May 31, 2004 Preceding RD Instruction 1980-D

common interest in efficiently disposing of REO by minimizing costs and maximizing recovery. To achieve that end, it is essential to establish consistent policies and coordinate relevant aspects of REO disposition so there is no impediment to the expeditious sale of the REO and the settlement of loss claims.

The purpose of a property disposition plan is to ensure that both RHS and the lender have a mutual understanding of how a property will be marketed and what factors might influence the net proceeds from the sale. While RHS does not impose specific marketing requirements, RD Instruction 1980-D, §1980.370, binds a lender to "…perform those services which a reasonable and prudent lender would perform in servicing its own portfolio of loans that are not guaranteed." This condition applies as well to REO disposition practices. RHS expects a lender to list and sell REO, given prevailing market conditions, in a manner that maximizes recovery. If necessary to accomplish this, the lender may offer concessions that are reasonable and customary for the area. Seller concessions beyond what is reasonable and customary are allowed only if the sales price is increased in a commensurable amount.

IMPLEMENTATION RESPONSIBILITIES:

Submitting a property disposition plan.
Under RD Instruction 1980-D, § 1980.376(a)(1)(ii), lenders must submit a property disposition plan for RHS concurrence if they take title to the property at liquidation. A lender should submit a property disposition plan to RHS for each REO within 30 days of liquidation. RD Instruction 1980-D, §1980.302(a) defines liquidation as follows: "Liquidation of the loan occurs when the Lender acquires title to the security… . In States providing a [post-sale] redemption period, the Lender does not typically acquire title until after expiration of the redemption period." Thus, the 30-day time period for submitting a property disposition plan would not begin until after expiration of any applicable redemption period. Lenders that are unsure whether a redemption period will affect the due date of the disposition plan should contact the GRH State Office for the state in which the property is located. If, before marketing and within 30 days of liquidation, a lender chooses to file a loss claim based on a liquidation value and estimated REO expenses, a disposition plan will not be required.

RHS and the lender have a common interest in effectively assessing an accurate value of the REO property prior to the submission of a property disposition plan and settlement of a loss claim. If the interior condition of the property cannot be determined due to an incomplete eviction process or some other legitimate reason, the circumstances should be documented and presented to the Agency with the property disposition plan within 30 days of gaining access to the property. Such circumstances do not extend the six-month marketing period.

Contents of a property disposition plan.
Beyond a written plan as described below, RHS does not require additional documentation to be submitted with the plan. Supporting documentation should be held in the lender file to submit with the loss claim or, if necessary, for subsequent RHS review. To assure a mutual understanding of the proposed disposition, the plan should address the following:

- Date acquired and, in case of redemption and/or eviction, date of possession.
- Estimate of present market value based on an interior appraisal or Broker's Price Option (BPO). Include valuation type **and** date.
- Itemization and cost of emergency maintenance to secure, and/or repairs necessary to market the property.
- Itemization and cost of any other planned capital improvement repairs, including the expected amount of property value to be added.
- Proposed marketing methods. This should include techniques to be used, such as the type of listing - exclusive broker, open or multiple listing; whether the property will be sold as-is or as-improved; proposed advertising – open house, broker tour, media frequency, signs; and whether financing or seller concessions will be offered.
- Anticipated marketing expenses, including advertising, commissions, and seller concessions, including any contributions to closing costs.
- Statement of listing price and expected marketing time, minimum acceptable price or other bid acceptance policy; for example, if a percentage of the listed price will be used, or if a lower acceptable bid is contingent on marketing time.
- Any other information related to the sale that might impact the amount of loss.
- Name, telephone and fax numbers, and email address of the lender's contact person.
- Name, telephone and fax number, and email address of the real estate agent.

A property disposition worksheet is provided for use as Attachment #1. The lender may use this form or any format which includes all required data elements listed above.

RHS concurrence with a property disposition plan.
A lender should proceed expeditiously with REO disposition. When a lender submits an acceptable property disposition plan, the Agency is not required to provide written concurrence. If necessary, RHS will contact the lender for clarifications, additional information, or to provide recommendations within 5 business days after receipt of the plan. The Agency reserves the right to reject a plan that indicates a deficiency or departure from prudent disposition practices. After implementation, a lender should review any significant departure from the plan with RHS before disposition. RHS review and acceptance of a property disposition plan does not necessarily mean that all expenses associated with the plan will be accepted as reimbursable cost items for the loss claim. Reimbursable expenses must be reasonable and customary. At its discretion, the Agency reserves the right to request a copy of the appraisal or BPO that was used to develop the

disposition plan on a case-by-case basis. Copies of the appraisal or BPO will typically be required for Quality Control purposes or to help justify recommended listing prices that are unusually low.

Failure to submit a property disposition plan.
If, after marketing the REO property for sale, a lender submits a loss claim and a required property disposition plan has not been submitted, RHS will notify the lender of plan requirements. If REO has been sold without prior submission of a required plan, RHS, before a claim is paid, will require the lender to submit a disposition summary to address each of the items required for a property disposition plan, providing actual marketing activities, prices and expenses. A lender may risk loss claim reduction or denial for failure to act prudently on REO disposition; however, a claim may not be reduced or denied solely for failure to submit a plan before the property is sold. Under RD Instruction 1980.376(b), in order to reduce or deny a claim, RHS must make a connection between a lender's act (or failure to act) and the amount of the loss. RHS will monitor lenders for compliance with property disposition plan requirements and provide training when necessary.

Each Rural Development State Office is responsible for notifying state-approved lenders of the property disposition plan requirements and provide a copy of the worksheet by a letter similar to Attachment 2. The National Office will advise nationally approved lenders concurrent with the issuance of this AN using Attachment 2. Copies of the AN can also be obtained at the Rural Development web site, http://rdinit.usda.gov/regs/an_list.html.

For Further Information:
Questions may be directed to Joyce Halasz or Jenise Hight of the SFH, Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Ave., SW, Washington DC, 20250-0784. The telephone number is (202) 720-1452.

Attachments

Attachment 1

RHS Property Disposition Plan Worksheet

Part A. Borrower Information		
Borrower:	**Borrower SSN:**	**Date:**

Part B. Lender Information	
Servicer/Holder:	**Preparer:**
Phone No.:	**Loan Number:**

Part B. Property Information		
Street Address:		
City:	**State:**	**Zip Code:**
REO Date:	**Eviction Completed Date (if applicable):**	

Part D. Valuation Summary			
Appraisal Date:	**"As Is" Appraised Value:** **$**	**"As Repaired" Appraised Value:** **$**	**Appraiser:**
BPO Date:	**"As Is" BPO Value:** **$**	**"As Repaired" BPO Value:** **$**	**Estimated Cost of Repairs:** **$**

Itemized List of Repairs:	

Part E. Listing Summary			
Real Estate Agent:	**Agent's Phone No.:**	**Agent's Fax No.:**	
Marketing Strategy:	**Suggested List Price:** **$**	**Suggested Sales Comm.:** **%**	**Seller Concessions:** **%**
List Price Reductions: Percentage: Frequency (days):		**Min. Acceptable Bid:** **$**	**MLS Listing (Y/N)?:**

Estimated 6 mo. REO Expenses Anticipated:	
Initial Cleaning	**$**
Securing	$
Utilities	**$**
Lawn Service	**$**
Winterization	**$**
Other	**$**
Total	**$**

Additional Comments:

This plan will be implemented within five (5) business days from the date of the plan unless RHS provides alternative recommendations.

Authorized Lender Signature	Print or Type Name	Date

Attachment 2

TO: Nationally Approved SF-GRH Lenders

ATTENTION: Servicing and Loss Claim Managers

SUBJECT: Single Family - Guaranteed Rural Housing (SF-GRH)
Lender Real Estate Owned Property Disposition Plans

RHS and the lender have a common interest in efficiently disposing of REO by minimizing costs and maximizing recovery. To achieve that end, it is essential to establish consistent policies and coordinate relevant aspects of REO disposition so there is no impediment to the expeditious sale of the REO and the settlement of loss claims.

The purpose of a property disposition plan is to ensure that both RHS and the lender have a mutual understanding of how a property will be marketed and what factors might influence the net proceeds from the sale. While RHS does not impose specific marketing requirements, 7 C.F.R 1980.370, binds a lender to "…perform those services which a reasonable and prudent lender would perform in servicing its own portfolio of loans that are not guaranteed." This condition applies as well to REO disposition practices. RHS expects a lender to list and sell REO, given prevailing market conditions, in a manner that maximizes recovery. If necessary to accomplish this, the lender may offer concessions that are reasonable and customary for the area. Seller concessions beyond what is reasonable and customary are allowed only if the sales price is increased in a commensurable amount.

Submitting a property disposition plan.
Under 7 C.F.R. 1980.376(a)(1)(ii), lenders must submit property disposition plans for RHS concurrence if they take title to the property at liquidation. A lender should submit a property disposition plan to RHS for each REO within 30 days of liquidation. RD Instruction 1980-D, §1980.302(a) defines liquidation as follows: "Liquidation of the loan occurs when the Lender acquires title to the security….In States providing a [post-sale] redemption period, the Lender does not typically acquire title until after expiration of the redemption period". Thus, the 30-day time period for submitting a property disposition plan would not begin until after expiration of any applicable redemption period. Lenders that are unsure whether a redemption period will affect the due date of the disposition plan should contact the GRH State Office for the state in which the property is located. If, before marketing and within 30 days of liquidation, a lender chooses to file a loss

claim based on a liquidation value and estimated REO expenses, a disposition plan will not be required.

RHS and the lender have a common interest in effectively assessing an accurate value of the REO property prior to the submission of a property disposition plan and settlement of a loss claim. If the interior condition of the property cannot be determined due to an incomplete eviction process or some other legitimate reason, the circumstances should be documented and presented to the Agency with the property disposition plan within 30 days of gaining access to the property. Such circumstances do not extend the six-month marketing period.

Contents of a property disposition plan.
Beyond a written plan as described below, RHS does not require additional documentation to be submitted with the plan. Supporting documentation should be held in the lender file to submit with the loss claim or, if necessary, for subsequent RHS review. To assure a mutual understanding of the proposed disposition, the plan should address the following:

- Date acquired and, in case of redemption and/or eviction, date of possession.
- Estimate of present market value based on an interior appraisal or Broker's Price Opinion (BPO). Include valuation type **and** date.
- Itemization and cost of emergency maintenance to secure, and/or repairs necessary to market the property.
- Itemization and cost of any other planned capital improvement repairs, including the expected amount of property value to be added.
- Proposed marketing methods. This should include techniques to be used, such as the type of listing - exclusive broker, open or multiple listing; whether the property will be sold as-is or as-improved; proposed advertising – open house, broker tour, media frequency, signs; and whether financing or seller concessions will be offered.
- Anticipated marketing expenses, including advertising, commissions, and seller concessions, including any contributions to closing costs.
- Statement of listing price and expected marketing time, minimum acceptable price or other bid acceptance policy; for example, if a percentage of the listed price will be used, or if a lower acceptable bid is contingent on marketing time.
- Any other information related to the sale that might impact the amount of loss.
- Name, telephone and fax numbers, and email address of the lender's contact person.
- Name, telephone and fax number, and email address of the real estate agent.

A property disposition worksheet is provided for use as Attachment #1. The lender may use this form or any format which includes all required data elements listed above.

RHS concurrence with a property disposition plan.
A lender should proceed expeditiously with REO disposition. When a lender submits an acceptable property disposition plan, the Agency is not required to provide written concurrence. If necessary, RHS will contact the lender for clarifications, additional information, or to provide recommendations within 5 business days after receipt of the plan. The Agency reserves the right to reject a plan that indicates a deficiency or departure from prudent disposition practices. After implementation, a lender should review any significant departure from the plan with RHS before disposition. RHS review and acceptance of a property disposition plan does not necessarily mean that all expenses associated with the plan will be accepted as reimbursable cost items for the loss claim. Reimbursable expenses must be reasonable and customary. At its discretion, the Agency reserves the right to request a copy of the appraisal or BPO that was used to develop the disposition plan on a case-by-case basis. Copies of the appraisal or BPO will typically be required for Quality Control purposes or to help justify recommended listing prices that are unusually low.

Failure to submit a property disposition plan.
If, after marketing the property for sale, a lender submits a loss claim and a required property disposition plan has not been submitted, RHS will notify the lender of plan requirements. If REO has been sold without prior submission of a required plan, RHS, before a claim is paid, will require the lender to submit a disposition summary to address each of the items required for a property disposition plan, providing actual marketing activities, prices and expenses. A lender may risk loss claim reduction or denial for failure to act prudently on REO disposition. RHS will monitor lenders for compliance with property disposition plan requirements and provide training when necessary.

For Further Information:
Questions about this AN may be directed to Joyce Halasz or Jenise Hight of the SFH, Guaranteed Loan Division, USDA, Rural Housing Service, 1400 Independence Ave., SW, Washington DC, 20250-0784. The telephone number is 202-720-1452.

Attachment