

Part 1927 – REAL ESTATE TITLE CLEARANCE AND LOAN CLOSING

Subpart B – Real Estate Title Clearance and Loan Closing

Section 1927.51 General.

This instruction supplements Instruction 1927-B, Real Estate Title Clearance and Loan Closing.

Section 1927.52 Definitions.

Closing protection letter, loan closing protection letter and indemnification agreements are one and the same.

Section 1927.54 Requirements for closing agents.

(c) Approval of attorneys. National Instruction requires only that the attorney be a member in good standing of a State Bar Association and licensed to practice in our State. The attorney may be a resident of another state and still close loans in Missouri as long as the attorney is licensed to practice in Missouri. This means that as long as the above requirements are met, any attorney may close loans in any county.

If title insurance is not used and meets the requirements of 1927.54(a), approval must be requested from State Office to utilize title opinions in lieu of title insurance. Justification required by 1927.54(a) must be provided to show why title insurance is not available or economically not feasible. The amount of errors and omissions/malpractice insurance will be determined by State Office on a case-by-case basis. The attorney will submit Form 1927-19 which will be forwarded to State Office for a determination of whether their existing coverage is acceptable. If their existing coverage is not adequate, State Office will advise as to the amount required for that particular situation.

It is recommended that attorneys providing loan closing services utilizing title insurance become an approved agent for the title insurance company for which they write. This is done by having the attorney request a loan closing protection letter be sent to the State Office from the title insurance company, listing that attorney as an authorized issuing agent. If the attorney takes this action, they are not required to complete Form 1927-19 which includes requirements for professional liability and fidelity bond coverage. The loan closing protection letter from the title insurance company provides for this coverage.

(d) Approval of Title Companies. It is recommended that title companies providing loan closing services utilizing title insurance become an approved agent for the title insurance company for which they write. This is done by having the title company request a loan closing protection letter be sent to the State Office from the title insurance

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company, listing that title company as an authorized issuing agent. If the title company takes this action, they are not required to complete Form 1927-20, which includes requirements for professional liability and fidelity bond coverage. The loan closing protection letter from the title insurance company provides for this coverage.

(f) Responsibility of approval official. Training will be conducted in conjunction with the first loan closing.

(g) Conflict of interest. When a loan closing agent must be selected for the handling of closing voluntary conveyances, the selection must be done in a manner to avoid the appearance of favoritism on the part of the Community Development Manager or Farm Loan Manager. It is recommended that a list of all available closing agents in the county be maintained in the 1927-A Operational File and the closing agent for each transaction be selected on a rotating basis from the list, rather than to select at random, or on any other basis which could give rise to allegations of favoritism.

(j) Rejecting closing agent or title insurance companies. We have been advised by OGC that even though the instruction refers to delays in closing as being a possible basis for rejecting a closing agent, they are of the opinion that if such an agent were to be rejected on this basis, it should be taken through the debarment regulations (1940-M). If the loan is approved outside the initiating office, the initiating office will approve the closing agent before forwarding the loan material to the loan approval official.

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(b) Initial responsibility of approval official. The approving official for the loan will also be the approving official for the loan closing agent. If, due to the amount of the loan request, the loan is approved outside the initiating office, the initiating office will approve the closing agent before forwarding the loan material to the loan approval official. The approval official will base the approval on the information supplied by the attorney/title company on Forms 1927-19 or 1927-20, or be on the State Office approved list, Exhibit A of MO 1927-B.

The approval of the loan closing agent will be documented in each applicant/borrower case file at the time written notification (Form 1927-4, Transmittal of Title Information, is the written notification) to the agent is sent.

(d) Use of title opinion. For all loans made for the purchase of a dwelling or essential farm service building which is relocated from one tract of land to another tract and a deed of trust is taken to secure the loan and State Office has approved use of title opinion in lieu of title insurance, the following requirements must be met:

1. The closing agent must give an opinion on both tracts of real estate.
2. A partial release should be obtained from any parties who hold liens or other encumbrances which could affect the building being moved.

(e) Use of title insurance. For all loans made for the purchase of a dwelling or essential farm service building which is relocated from one tract of land to another tract and a deed of trust is taken to secure the loan and title insurance is used, the following requirements must be met:

1. The title insurance binder must address both tracts of real estate.
2. A partial release should be obtained from any parties who hold liens or other encumbrances which could affect the building being moved.

Section 1927.56 Scheduling loan closing.

(b) Form 1927-16, Notification of Loan Closing, will be used to notify all Rural Housing and Farm Service Agency applicants of the loan closing.

Section 1927.57 Preparation of closing documents.

(a) Preparation of deeds, mortgages and curative instruments. Execution of deed of trust. The borrower's spouse must execute and acknowledge the deed of trust to give Rural Development or Farm Service Agency an enforceable lien on the real estate. Section 442.040 of Missouri Statutes provides that a minor spouse married to an adult will be considered as an adult for the purpose of joining with the adult spouse in the execution of any instrument affecting the spouse's real estate when title to real estate property is vested in the adult spouse alone. When these circumstances exist, the minor spouse will be required to sign the deed of trust. Section 442.080 of Missouri Statutes provides that a minor can disaffirm a deed of trust within two years after reaching the age of 18. For this reason, when a loan is made where title to real estate property is proposed to be vested in an adult and a minor spouse, title to the real property should be conveyed only to the adult, but both the adult and the minor spouse should execute the deed of trust. The above instruction would be equally applicable to mental incompetents and non-citizens. To summarize, none of the three classifications of persons mentioned would sign a note, and thereby become borrowers, but all such persons would execute the deed of trust. In the event property is owned by an adult and minor/disabled person, it is necessary that either court approval (R.S.Mo. Section 475.092) for the transaction or a court appointed conservator (R.S.Mo. Section 475.080) with the power to bind the minor/disabled person to the transaction be obtained.

(b) (1) Real estate mortgage forms. You will continue to use Form RD 1927-1 MO, RD 3550-14 MO, or Form FSA 1927-1 MO, Real Estate Deed of Trust for Missouri, as our real estate mortgage form for all types of loans.

(b) (3) Persons required to execute mortgage. For disabled persons, a conservator may sign the note and deed of trust. "Disabled" is defined as one who is "unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial

resources.” R.S. Mo. Section 475.010. The Missouri Guardianship code also defines “manage financial resources;” for Rural Development or Farm Service Agency purposes that definition includes those actions necessary to obtain, administer, and dispose of real and personal property. R.S. Mo. Section 475.010 (11). It is within the court’s power **without appointing a conservator** to authorize, direct or ratify any transaction (including contracts) relating to the **minor or** disabled person’s financial affairs or involving his estate where the court determines that the transaction is in the best interest of the minor or disabled person. The court may appoint a “special conservator” to assist in the accomplishment of the transaction. R.S. Mo. Section 475.092. Therefore, if the court specifically appoints a “special conservator” to sign a Rural Development or Farm Service Agency note and deed of trust, this would be permissible. This also could be accomplished by the court actually appointing a limited conservator or guardian for the purpose (with the power) of entering into specific legal arrangements concerning Rural Development or Farm Service Agency. R.S. Mo. Section 475.080.

(b) (7) Describing notes in mortgages. In Missouri, when taking mortgages on land not previously mortgaged to Rural Development or Farm Service Agency, all outstanding notes will be described on a new deed of trust which describes all the land owned; therefore, we will be fulfilling the requirements that all notes will be secured by all land. This does not apply to RRH loans. If you are completing a deed of trust that involves Assumption Agreements, be sure that the deed of trust describes the original Promissory Notes. You may also include the description of the Assumption Agreement(s) beneath the description of the original Promissory Notes if you wish.

(d) (5) Form of Agreement. **FOR RURAL DEVELOPMENT.** Form RD-MO 1927-2, Request for Notice of Sale Under Deed of Trust and Assignment of Proceeds and Modification of Deed of Trust, will be used in lieu of foreclosure notice or assignment agreement. Form RD-MO 1927-2 will be recorded in every instance where Rural Development obtains a junior lien. Form RD-MO 1927-2 addresses that in the event of foreclosure, the borrower and Trustee agree to assign excess proceeds above the Beneficiary’s debt to the Government. The original executed form RD-MO 1927-2 will be delivered to the Recorder for recording no later than two weeks after the Rural Development’s deed of trust is recorded. A copy of the recorded form will be retained in the borrower(s) case file.

(d) (5) Form of Agreement. **FOR FARM SERVICE AGENCY.** Form FSA-MO 1927-2, Request for Notice of Sale Under Deed of Trust, will be used in lieu of foreclosure notice agreement. Form FSA-MO 1927-2 will be recorded in every instance where Farm Service Agency obtains a junior lien. The original executed Form FSA-MO 1927-2 will be delivered to the Recorder for recording no later than two weeks after the Farm Service Agency deed of trust is recorded.

Form FSA-MO 1927-3, Assignment of Proceeds and Modification of Deed of Trust, will be obtained when a Farm Service Agency loan, either initial or subsequent, is to be secured by a lien junior to a deed of trust providing that excess foreclosure sales proceeds will be paid directly to the borrower(s). The Assignment, to be executed by both the

borrower(s) and the beneficiary under the prior lien deed of trust, should be recorded of record at the time the Farm Service Agency deed of trust is recorded. A copy of the executed Assignment form should be mailed to the prior lienholder's trustee (named in the prior lienholder's deed of trust). The original copy of this form will be retained in the borrower(s) case file.

(e) Correction of error in recorded security instruments. In any case where an error appears in a recorded deed of trust, a corrected deed of trust will be prepared, marked "CORRECTED", and filed. A lien search will be done for the period from the recording of the incorrect deed of trust to the corrected deed of trust to determine if any intervening liens are present which might affect the Government's security position. In any case where the error is made by the closing agent, we would place on them the responsibility of preparing, obtaining signatures, filing the corrected deed of trust and providing us with the required lien search (may be in the form of another Form 1927-10, Final Title Opinion, covering the new period or Form FmHA-MO 427-4, Report on Real Estate Lien Search, or for FSA, Form FSA-MO 1927-4, Report on Real Estate Lien Search) to ensure that the security interest of the Government is not affected. Should any intervening lien occur, the file should be submitted to the State Office for referral to OGC on a case-by-case basis.

Any errors found on closing documents in connection with a Rural Rental Housing closing will be referred to the State Office on a case-by-case basis.

Section 1927.58 Closing the transaction.

(a) Disbursement of loan funds. NOTE: NO DEVELOPMENT FUNDS WILL BE KEPT IN ESCROW BY THE CLOSING AGENT AFTER CLOSING. Supervised Bank Accounts will be used for development that is not completed by the date of loan closing.

(d) Affidavit regarding work of improvement. Form 1927-5, Affidavit Regarding Work of Improvement, covers only the potential for mechanics or materialmen's lien against the property. The applicable timeframe for attorney certification is six months, as R.S.Mo. Section 429.080 requires that a lien must be filed in Circuit Court within six months of the time the indebtedness occurred.

Section 1927.59 Subsequent loans and transfers with assumptions.

(a)(3)(ii). A new title policy (for the full amount, i.e., both the assumed amount and any additional loan amount) will be required each time a property is transferred to a new borrower.