

For: Oregon County Offices

Rental Proceeds Demand Letters

Approved by: Larry E. Frey, State Executive Director

LEF/LEV/RBP

by Larry E. Frey

1 Overview

A Purpose

The purpose of this Oregon Notice is to provide standard notification letter to borrowers who lease out real estate serving as security for their FSA indebtedness without FSA’s consent or who fail to assign rental payments to FSA. A second standard notification letter is provided for leasees or renters who lease real estate from FSA borrowers.

B Background

There have been cases involving Farm Loan Program borrowers who have leased part or all of their real estate serving as security for their FSA indebtedness without the Agency’s consent and without accounting for the proceeds. In some litigation cases borrowers have leased their security property for an extended period of time without remitting the proceeds to FSA for application to their loan account.

Provision 12 of Form FmHA 1927-1 OR, “Real Estate Mortgage For Oregon,” gives FSA an automatic assignment of all income derived from the security property.

C Contact

Questions in regards to this Notice should be directed to Robert Perry in the Farm Loan Program staff in the State Office.

FILING: Preceding FmHA Instruction 1965-A

Disposal Date:

Distribution:

May 31, 2003

STO, DD, COR, COC, COF

6/1/02

OR Notice FLP-105

2 Action

A Consent to Lease

FmHA Instruction 1965-A, Section 1965.17 provides general guidance in dealing with borrowers who have leased or intend to lease a portion or all of their security property. No actions will be taken by FSA to approve or disapprove a lease if the lease is less than 3 years and contains no option to purchase, provided the borrower continues to operate the security. Under unusual circumstances when a proposed term of the lease exceeds 3 years or contains an option to purchase, the Deputy Administrator of Farm Loan Programs can consent to such lease arrangements.

B Use of Demand Letters

When FSA becomes aware that security property is being leased without the Agency's consent, use Exhibit 1 to notify borrowers that the lease proceeds must be remitted to FSA for application to their loan account.

Use Exhibit 2 to notify leasees that all lease proceeds must be remitted to FSA for the proper application to borrowers' loan accounts.

Exhibits 1 and 2 shall be sent by certified mail, return receipt requested, and by regular mail on the same date to provide proper notification.

OR Notice FLP-105

Exhibit 1

(Date)

(Name of Borrower)

(Address)

RE: Demand For Rental Proceeds From Security Property

Dear (Name of Borrower):

It has come to our attention that you are leasing out the following described real estate in (name of County) County that serves as security for your loan(s) to the Farm Service Agency (FSA).

(Insert Description of Real Estate)

As you know, the mortgage(s) that you signed, prohibits you from leasing the real estate without written consent from FSA. In addition, it includes a provision whereby you assigned your interests in any income, including rents received from the property, to FSA. Your failure to abide by the terms of your mortgage(s) means that you are in default. By this letter, FSA is notifying you that you must contact your local FSA Office to discuss whether FSA will consent to your leasing the security property and to make arrangements for the disposition of any rental proceeds.

This letter also serves as demand to you that all rental proceeds you have received or will receive be immediately sent to FSA, for application in accordance with the terms of your mortgage. FSA must be made a joint payee on all rental payments. Please instruct the renter(s) or lessee(s) to make checks jointly payable to you and to the "United States of America, acting through the Farm Service Agency," and to send the checks to the following address:

Farm Service Agency
(Insert Address of Servicing Office)

If you fail to take the action demanded, FSA will take appropriate steps, which may include administrative and legal actions, to collect the rental proceeds. Please call (insert the Farm Loan Manager's name) at (insert phone number) if you wish to discuss this matter further or make arrangements for a meeting.

Sincerely,

(Insert Name)

Farm Loan Manager

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Exhibit 2

(Date)

(Name of Renter)

(Address)

RE: Demand For Rental Payments – (Insert Borrower’s Name)

Dear (Insert Renter’s Name):

It has come to our attention that you are leasing real estate in (insert County name) County from (insert name of borrower) described as follows:

(Insert Description of Real Estate)

Please be advised that (insert borrower’s name) signed one or more mortgage(s) on the real estate which assigned to FSA all income derived from it, including rent payments. (Insert the borrower’s name) is prohibited from leasing out the property without FSA’s written permission.

FSA has made formal demand on (insert the borrowers’ name) to include FSA as a payee on all rental payments. We are therefore requesting that you make any and all rental payments payable to the (name of borrower) and “United States of America, acting through the Farm Service Agency.” Please send those payments directly to the following FSA office:

Farm Service Agency
(Insert Address of Servicing Office)

If you fail to include FSA as a payee on your rental checks or payments, FSA will take appropriate steps, which may include administrative and legal action, to collect. Please call (insert the Farm Loan Manager’s name) at (insert phone number) if you wish to discuss this matter further or if you have any further questions.

Sincerely,

(Insert Name)
Farm Loan Manager

cc: (Borrower)