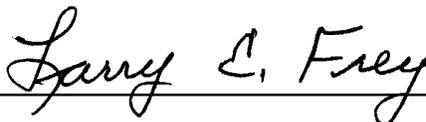


For: County Offices

**Pledge of Third Party Property as Security**

Approved By: State Executive Director

LEF:LEV:lv



**1 Overview**

**A  
 Background**

Applicants for FLP assistance will occasionally lack sufficient security property to fully collateralize their loan requests, or meet the 150 percent requirements of Section 1941.19 of FmHA Instruction 1941-A and Section 1943.19 of FmHA Instruction 1943-A.

Section 1941.19 of FmHA Instruction 1941-A and Section 1943.19 of FmHA Instruction 1943-A permit the pledge of collateral by third parties as security for a direct loan applicant's existing or proposed FSA indebtedness. In order to accomplish this, however, additional language needs to be placed in FSA's security instruments.

**B  
 Purpose**

The purpose of this Oregon Notice is to:

- provide language to be inserted on Form FSA 440-4A, "Security Agreement," and Form FmHA 1927-1OR, "Real Estate Mortgage for Oregon," when security will be pledged by a third party
- provide guidance on reconciling the Agency's lien position on third party collateral proposed as security for an applicant's FSA indebtedness
- provide guidance on properly perfecting the Agency's lien on third party collateral.

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**FILING: Preceding FmHA Instructions 1941-B and 1943-A**

Disposal	Distribution
September 1, 2002	STO, DD, COR, COC, COF - Including Farm Loan Programs

## 2 Chattel Security

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A

### Lien Search and Collateral Evaluation

When a third party will be pledging chattels (personal property) as collateral for an applicant's FSA indebtedness, a lien search must first be conducted to determine whether the proposed collateral is subject to any prior liens, and whether FSA can obtain an undisputed superior lien position. If the proposed collateral is subject to the lien of another secured party, one of the following actions must be taken:

- the proposed security property should be released from the lien of the prior lienholder by obtaining Partial Release on a Form UCC-3 from the secured party, filing the Partial Release with the Secretary of State's Office, and then confirming the filing and partial release with an updated lien search
- the lien of the prior lien holder should be subordinated to FSA on the proposed collateral through the use of a Subordination Agreement specifically describing the proposed security property.

**Note:** The proposed form of Subordination Agreement must be submitted through the STO to OGC for review and approval prior to its execution by the prior lien holder and acceptance by FSA.

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### Perfecting the Agency's Lien

A UCC-1, "Financing Statement," must be filed naming all third party owners of personal property to be pledged as collateral for the FSA indebtedness.

- The description of the collateral placed in Item 4 of the UCC-1 should be as general as possible, leaving the itemized description placed on the Security Agreement as the specific description.

**Examples:** Farm machinery and equipment, and proceeds thereof.  
Disposition of such collateral is NOT hereby authorized.

Livestock, cattle and calves, and proceeds thereof.  
Disposition of such collateral is NOT hereby authorized.

- By executing a modified Form FSA 440-4A, "Security Agreement" with a revision date of 06-29-01 as set forth in Subparagraph 2 C of this Oregon Notice, third party owners of the collateral being pledged authorize FSA to file and continue a UCC-1 Financing Statement.
  - To verify the required lien position, an updated lien search must be obtained after FSA's UCC-1 is placed of record naming all third party owners of personal property to be pledged.
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**2 Chattel Security, *Continued***

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C

**Modifications for Form FSA 440-4A, “Security Agreement”**

When a third party will be pledging chattels (personal property) as collateral for an applicant’s direct loan indebtedness, the third party owners of the collateral to be pledged will be required to sign the Security Agreement with the applicant after the following modifications are made:

- place an asterisk (\*) after the word “and” where it appears at the end of the first paragraph in Section II of Form FSA 440-4A bearing a revision date of 06-29-01
- type an asterisk (\*) followed by the language shown below in the space provided at the bottom of the first page of Form FSA 440-4A so that it appears as follows:

\* In consideration of said loan(s) made or to be made to Debtor by the Secured Party, the undersigned \_\_\_\_\_ and \_\_\_\_\_, whose mailing address is \_\_\_\_\_, join in the execution of this Security Agreement to provide additional security for said loan(s) made or to be made to Debtor and for the purpose of subjecting the collateral herein described and owned by them to all of the terms and provisions of this Security Agreement to the same extent and in the same manner as if the undersigned had joined in executing the note with the Debtor; and

In describing the specific items of collateral on pages 3 and 4 of the Security Agreement, it is suggested that a line or two be left between the description of the collateral the borrower owns and the description of the collateral the third party owns. This will help keep collateral identification, by owner, clearer.

Both the borrower(s) and the third parties that own the additional collateral being pledged as security must sign the modified Form FSA 440-4A.

When revised or updated Security Agreements are obtained, please remember that the updated Security Agreement must be signed by all parties (including third parties) having an ownership interest in any of the property described in the Security Agreement.

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### 3 Real Estate Security

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#### Lien Search and Security Evaluation

When a third party will be pledging real property as basic security for an applicant's direct loan indebtedness, a title report and related information must first be obtained to determine:

- whether the property serves as security for another lienholder,
- whether the security instruments of any prior lien holder will permit FSA to take a junior lien position without causing the prior lien holder's security instrument to be in default
- whether the security instruments of any prior lienholder contain objectionable clauses
- the unpaid balances of all prior liens.

Once this information and an appraisal of the property is obtained, and evaluation can be made to determine the security value of the proposed security.

**Note:** If it is necessary that the lien of a prior lienholder be subordinated in favor of FSA to provide the Agency with its required lien position, the proposed form of Subordination Agreement must be submitted through the STO to OGC for review and approval prior to its execution by the prior lien holder and being placed of record by FSA.

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### 3 Real Estate Security, *Continued*

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*B*

#### **Modifications for Form FSA 1927-1OR, “Real Estate Mortgage for Oregon”**

When a third party will be pledging real estate as collateral for an applicant’s direct loan indebtedness, the third party owners of the collateral to be pledged will be required to sign the Real Estate Mortgage with the applicant after the following modifications are made:

- place an asterisk (\*) immediately after the citation to “7 U.S.C. § 2001” contained in the next-to-the-last paragraph on the first page of Form FmHA 1927-1OR bearing a revision date of 9-92
- type an asterisk (\*) followed by the language shown below in the space at the bottom of the first page of Form 1927-1OR so that it appears as follows:

\* And in consideration of said loan(s) made or to be made to the Borrower by the Government, the undersigned \_\_\_\_\_ and \_\_\_\_\_, whose mailing address is \_\_\_\_\_, join in the execution of this mortgage to provide additional security for said loan(s) made or to be made to Borrower and for the purpose of subjecting the property herein described and owned by them to all of the terms and provisions of this mortgage to the same extent and in the same manner as if the undersigned had joined in executing the note with the Borrower.

The legal description contained in the Form FmHA 1927-1OR must describe all of the real property being pledged as security by the third party as well as the borrower’s real property taken as security.

Both the borrower(s) and the third parties that own the additional property being pledged as security must sign the modified Form FmHA 1927-1OR.

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### 4 Contacts

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#### **Contact Persons**

If questions arise concerning the security instruments or legal documents necessary to take a lien on property being pledged by third parties as collateral for loans being made to direct loan borrowers, please contact a Farm Loan Specialist, or the Farm Loan Chief.

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