



FmHA AN No. 2673 (1951)

October 28, 1992

SUBJECT: Information Needed in Determining Lack of Good Faith of Farmer Programs Borrower Due to Waste, Fraud or Conversion

TO: State Directors, District Directors, and County Supervisors

PURPOSE/INTENDED OUTCOME:

This Administrative Notice (AN) is being issued to assist the Office of the General Counsel (OGC) in making legal determinations of waste, fraud or conversion. The purpose of this AN is to clarify the information that is necessary to determine whether a borrower is ineligible for Primary Loan Service Programs, Net Recovery Buyout or Leaseback/Buyback, based on a lack of good faith due to fraud, waste or conversion.

The attached GUIDE, or a substitute approved by your Regional Attorney, OGC, should be used when requesting a written legal opinion from OGC to substantiate allegations of fraud, waste or conversion.

COMPARISON WITH PREVIOUS AN:

This AN updates and replaces AN No. 2343(1951), which expired on July 31, 1992.

This AN covers the requirement that a borrower act in good faith in order to be eligible for leaseback/buyback, in accordance with Section 1951.911(a)(4) of FmHA Instruction 1951-S.

IMPLEMENTATION RESPONSIBILITIES:

In cases where FmHA notifies a borrower of nonmonetary default, or denies a request for servicing due to fraud,

EXPIRATION DATE: October 31, 1993

FILING INSTRUCTIONS:
Preceding FmHA
Instruction 1951-S



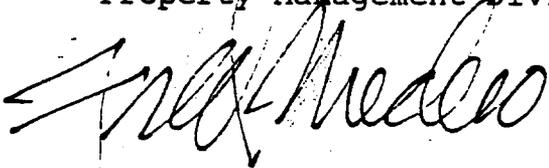
waste or conversion, the attached Guide or an OGC substitute will be completed to identify and explain any specific acts or circumstances which would justify the allegations of fraud, waste or conversion.

The attached GENERAL GUIDELINES set out the elements of fraud, waste or conversion, which OGC will use to render its opinion. This documentation will be obtained PRIOR to mailing Attachments 1, 3, and 4 to Exhibit A of FmHA Instruction 1951-S.

For those borrowers in nonmonetary default based on a lack of good faith in meeting agreements made on Form FmHA 1962-1, "Agreement for the Use of Proceeds/Release of Chattel Security," or any other agreements made with FmHA, the County Supervisor should thoroughly document the facts in the running case record PRIOR to mailing Attachments 1, 3, and 4 to Exhibit A of FmHA Instruction 1951-S. An OGC opinion is not required in those cases in which a borrower fails to meet agreements with FmHA. However, a lack of good faith based on a combination of reasons, (for example, conversion and breach of an agreement), will be supported by an OGC opinion regarding the conversion. If problems are encountered, OGC may be contacted for advice.

ANY REVISIONS OR MODIFICATIONS TO THIS ADMINISTRATIVE NOTICE THAT YOU WISH TO PUBLISH AS A STATE DIRECTIVE MUST BE APPROVED BY THE ASSISTANT ADMINISTRATOR OF FARMER PROGRAMS, BEFORE IT IS RELEASED FOR IMPLEMENTATION IN YOUR STATE. THE ONLY EXCEPTION TO THIS REQUIREMENT IS WHEN THE REVISION OR MODIFICATION IS NECESSARY FOR COMPLIANCE WITH STATE LAW.

If you have any questions regarding this AN, you may contact Jerry P. Wishall, Farmer Programs Loan Servicing and Property Management Division, at (202) 720-1651.


LA VERNE AUSMAN
Administrator


Attachments

G U I D E

QUESTIONNAIRE TO BE COMPLETED AND FURNISHED TO THE OFFICE OF THE
GENERAL COUNSEL WHEN SEEKING OPTIONS ON DENIAL OF REQUESTS FOR
PRIMARY LOAN SERVICING PROGRAMS, NET RECOVERY BUYOUT OR
LEASEBACK/BUYBACK
ON THE BASIS OF FRAUD, WASTE OR CONVERSION

I. FRAUD: Are you making an allegation that the borrower is not in good faith because of fraud against FmHA? Yes___ No___ (If yes, completely answer the following question and furnish applicable documentation. Attach additional sheets if necessary. If no, proceed to and consider Part II Waste (page 3) of this guide or Part III Conversion (page 5) of this guide.)

A. Did the borrower make a false representation to FmHA? Yes___ No___ (If yes, specifically set out the false representation or attach a copy if written.)

B. Was the false representation material to FmHA's decision to provide the borrower with a loan, or to restructure, refinance, or compromise an existing loan? Yes___ No___ (If yes, specifically set out the importance of the false representation.)

C. Did the borrower know that the information was false or did the borrower intentionally omit material information? Yes___ No___ (If yes, specifically set out why you think the borrower had knowledge of the

false information or intended to omit material information.)

D. Did FmHA know at the time that the representation or omission made was false and intentional? Yes ___ No ___ (If no, when did FmHA learn of the false representation or omission of fact.)

E. Did FmHA rely on the false representation or omission of material fact when FmHA loaned the borrower money, or to restructure, refinance, or compromise an existing loan? Yes ___ No ___ (Specifically set out the basis for your opinion.)

F. What was the date of the alleged fraud?

G. Set out specifically the injury FmHA suffered because of the false representation or omission of material fact.

H. What actions did FmHA take once the alleged fraud was discovered?

I. Other facts for OGC to consider in its analysis.

II. WASTE: Are you making an allegation that the borrower did not act in good faith because of waste against FmHA's security? Yes ___ No ___ (If yes, completely answer the following questions and furnish applicable documentation. Attach additional sheets if necessary. If no, proceed to Part III Conversion (page 5) of this guide. If fraud is involved return to Part I fraud (page 1) of this guide.

A. If real estate security was involved, was the borrower in lawful possession of FmHA security?

B. Did the borrower actively destroy all or part of FmHA's security? Yes ___ No ___ (If yes, specifically set out the facts supporting your opinion.)

C. Did the borrower allow the death, decay deterioration, disrepair, or destruction of FmHA security through

inexcusable neglect or negligence? Yes___ No___ (If yes, specifically set out the facts supporting your opinion.)

D. Did the borrower allow the death, decay, deterioration, disrepair, or destruction of FmHA security by not following management practices that a prudent person would have followed under similar circumstances? Yes___ No___ (If yes, specifically set out the facts supporting your opinion.)

E. When did the alleged waste take place?

F. What actions did FmHA take once the alleged waste was discovered?

G. What permanent injury was caused to FmHA's security by the alleged act of waste? (Set out in detail the monetary loss suffered by FmHA.)

H. Other facts for OGC to consider in its analysis.

III. CONVERSION: Are you making an allegation that the borrower did not act in good faith because of conversion of FmHA security? Yes___ No___ (If yes, completely answer the following questions and furnish applicable documentation. Attach additional sheets if necessary. If no and Part I fraud (page 1) and Part II waste (page 3) of this guide have already been considered and were both answered no you need to reassess whether the allegation of fraud, waste, or conversion is an issue.)

A. What was the type and dollar value of the collateral converted? List the approximate dates of conversion and the buyer's identity as near as FmHA knows or can guess.

B. Was the collateral sold by the borrower without authorization, or was it sold with authorization but the borrower failed to account for the proceeds?

C. Did the borrower dispose of FmHA's security in conscious and knowing violation of the provisions of all previous agreements, instructions and regulations of FmHA? Yes___ No___ (If yes, specifically set out the basis for your opinion.)

D. What use did the borrower make of the proceeds of the converted items? (If you are not sure, give your best guess and the basis for the opinion.)

E. Are there any aggravating or mitigating circumstances known? Yes___ No___ (If yes, specifically set out the basis for your opinion.)

F. What was the date of the last previous security/collateral check by FmHA prior to the alleged act of conversion? (Please summarize the findings of that chattel check.)

G. Had the borrower ever converted collateral before the incident(s) in question? If so, when did it happen, what was involved, and what action did FmHA take? Also, have any new loans been granted to the borrower after the time FmHA became aware of any conversion?

H. What was the actual County Office procedure in granting approval for this borrower to sell collateral not just what the regulations say?

I. What excuses, statements or confessions did they borrower make regarding the missing collateral? When and to whom were these statements made?

J. Has there been a contract investigation, referral to OGC or OIG on the matter? Yes ___ No ___ (If yes please state the details of the referral. If no, specifically state why a referral of the conversion was not made.)

K. State specifically the injury FmHA suffered because of alleged conversion of its security.

L. Other facts for OGC to consider in its analysis.
