

CHAPTER 15: MANAGING CUSTODIAL AND REO PROPERTY

15.1 OVERVIEW

The Agency assumes management responsibility for 2 types of properties: custodial and real estate owned (REO). Custodial property is borrower-owned property which has been abandoned. REO is Agency-owned property to which the Agency has acquired title, either as a result of foreclosure or conveyance by deed in lieu of foreclosure. This chapter outlines the requirements for management of each type of property.

The Field Office is responsible for on-site management activities and should work closely with CSC during the liquidation process for custodial properties. CSC continues to be responsible for the financial management.

The goal of property management is to protect the Government's interest; consequently, efforts to secure property should begin as soon as the Agency has control.

SECTION 1: PROPERTY MANAGEMENT METHODS AND ACTIVITIES

15.2 MANAGEMENT METHODS AND CONTRACTS

The Agency may conduct the management activities discussed in this chapter using Agency staff or may contract with qualified entities to perform them. The method of management depends on such factors as the number of properties to be managed, their location, condition, the necessary maintenance, and the availability of qualified staff. In some cases, a simple maintenance contract is all that is needed; in others, the Agency may require a complete management contract where a contractor provides all property management services, including, but not necessarily limited to securing and cleaning up the structure, yard work, arranging for and inspecting repairs, paying utilities, and coordinating with contractors, potential buyers or brokers for access to the property.

A. Selecting a Management Contractor


Management contractors must be selected in accordance with Agency procurement procedures under RD Instruction 2024-A.



B. Management Contract Requirements

At a minimum, management contracts must:

- Allow for properties to be added or removed from the contractor's assignment, whenever necessary, such as when a property is taken into custody, acquired or sold during the period of a contract; and
- Prohibit the preparer or his/her associates from doing any of the repair work when a contract calls for specification writing services.


If a contract includes marketing or broker services and involves management of 5 or more single family homes in the same subdivision, the contractor must develop and obtain Agency approval of an Affirmative Fair Housing Marketing Plan, as described in RD Instruction 1901-E. The contracting official approves the plan, however, any questions that might arise with respect to an Affirmative Fair Housing Marketing Plan should be directed to the Civil Rights Coordinator in the State Office. 

15.3 TAKING POSSESSION

A. Taking Custodial Possession

The Agency may need to take custody of security property when a borrower becomes incapacitated, dies or has abandoned a security property. When the CSC is unable to contact a borrower, the Field Office will be requested to inspect the property to determine its status and to attempt to contact the borrower. When the Field Office believes that a property may be abandoned, it will report to the CSC.

1. Determining Whether A Property Has Been Abandoned

The determination that a property has been abandoned requires significant investigation and documentation. In addition to the actions described in this paragraph, Field Staff must follow any procedures required by State or local law in order to confirm the determination of abandonment and to take custodial possession. A property is not considered abandoned if the borrower occupies the property, even if it is not being well maintained. Similarly, a property is not considered abandoned when the borrower does not occupy the dwelling but has made arrangements for its care. The Agency cannot act to obtain possession of a property as long as a lien holder has possession of the property, or the borrower or the lien holder has a right to lease proceeds. As a minimum, Field Staff must: 

Paragraph 15.3 Taking Possession

- Attempt to determine whether the security property is occupied, and if not by the borrower, what are the rights of the occupant; if any;
- Attempt to determine the location of and/or contact the borrower through sources such as neighbors, the postal service, utility companies, last-known employers, and relatives; and
- Determine whether there are other liens on the property and if liens exist, whether the lien holder(s) are willing to work with the Agency to secure the property.

2. Recommendation for Taking Custody

The Field Office will submit a report of its finding to CSC with a copy to the State Director advising that it appears the property has been abandoned and the Agency needs to assume responsibility for it in order to protect the security. Alternatively, if the Field Office reports that the property is occupied, the report will give details as to whether the occupant is under a lease or is unauthorized. The Field Office will provide any other relevant details and make the decision to take custodial possession of the property, as appropriate. The Field Office will notify CSC when the action has been taken.

3. Liquidation

The need to take custodial possession of a property may occur before or after a loan has been accelerated. If liquidation is not already in progress, taking custodial possession should initiate the process. The responsibility for conducting liquidation activities remains with CSC, supported by Field Office staff as required.

B. Acquisition of an REO Property

When the Field Office acquires a property, Field Staff must notify CSC. A new REO case file should be created from the original case file by removing and placing into the new file the title to the property, and recent inspection reports, appraisals, or other documentation related to the physical condition or value of the property. A list of all documents that have been removed should be placed in the original file. No information related to the borrower is needed in the REO file. Any documents relating to due diligence and response actions (clean-up activities) should also be placed in the REO file; however, these documents must be retained indefinitely to minimize Agency liability and should be so labeled.

15.4 INSPECTING AND SECURING CUSTODIAL AND REO PROPERTY

Inspection should be made of acquired property as soon as feasible after the foreclosure sale or other means of acquisition—usually within seven days. Field Staff must inspect the property to:

- Determine what steps need to be taken to further ensure its security and maintain its value.
- Identify whether the property is occupied and, if occupied, the intent of the occupants.
- Classify the property as program and nonprogram and evaluate the need for repairs.

A. Inspecting and Classifying the Property [7 CFR 3550.251(c)(1)]

Field Staff must designate REO property as program or nonprogram (NP) property after considering factors such as size, design, possible health and/or safety hazards, and obsolescence due to functional, economic, or locational conditions. A property that meets the requirements for program property, as described in Chapter 5, is classified as program property. Property that has been enlarged or improved, so that its value is clearly above program standards, or a property that would require major redesign or renovation to be brought to program standards, should be classified as NP property. REO property in an area no longer designated rural is treated as if it were still in a rural area.

For program property, a listing of needed repairs or improvements will be prepared. For NP properties, a listing should be prepared of any health and safety hazards which must be removed to release deed restriction. Repairs, if required, are typically a condition of sale and repair lists should be incorporated with the sale listing for all REO.

If the REO is occupied, preparation of the repair list may need to be delayed until the property is vacated, depending on the cooperation of the occupants. In this case, the status of the property should be monitored regularly.

The basis for classification as program or nonprogram must be thoroughly documented. Improper classification of the REO could result in an unsound loan if, for example, the remaining life of the property is less than the term of the loan. (A manufactured home with 15-20 years remaining life is not sound security for a subsidized loan with a minimum term of 25 years.) Classification as NP may significantly reduce the amount the Government could recover (especially if the REO is then leased) or could deprive a program-eligible family of an affordable home.

Paragraph 15.4 Inspecting and Securing Custodial and REO Property

B. Securing Custodial and REO Property

When the Field Office assumes management responsibility and takes possession of either a custodial or REO property, immediate steps must be taken to inspect and secure the property whether by Field Office staff or management contractor.

1. Physical Security of Vacant Properties

If the property is vacant, it should be locked or otherwise secured and a no trespassing notice should be posted to prevent entry by unauthorized persons. For REO only, after an inspection determines utility systems are in safe operable condition, utility companies should be contacted to maintain or reinstate utility service. An inventory should be made of any nonsecurity personal property left on the premises and efforts made to identify any owners or lien holders.

2. Occupied REO Properties

REO property may be occupied by a tenant under a lease with the former borrower or by the borrower. The Agency may decide to honor an existing lease if it is in the Government’s interest, or it may have to evict an unauthorized tenant.

When an REO property is under an existing lease and the Agency decides to continue the lease, the lessee must be notified, in writing, that the Agency has acquired the former lessor’s rights under the lease and that all payments should be remitted to CSC. If a lease is to be terminated, the lessee must be notified, in writing, that their lease is being terminated in 30 days, and they must vacate.

Lease payments due, payable, and received before the date the Agency acquired the property are applied to the borrower’s account. If there is a surplus, it is refunded to the former borrower. Lease payments due and payable after the date the Agency acquired the property are applied to a lease account established by CSC in the name of the lessee.

The Office of the General Counsel (OGC) should be contacted for advice and assistance when it is necessary to evict a tenant in order to obtain possession of REO property particularly if it is leased. A State Supplement will provide explicit instructions.



15.5 DISPOSITION OF NONSECURITY PROPERTY

The Agency has no legal claim on nonsecurity property. State or local law may affect procedures for disposing of property left on the premises



of a custodial or REO property. Field Staff must comply with any State or local requirements, as well as the procedures discussed in this paragraph. If the owner or lien holder of any personal property that remains in custodial or REO property can be identified and located, Field Staff must offer them a reasonable opportunity to remove the property. Any verbal conversations with the owner of the property should be confirmed in writing.

A. Custodial Property

The Agency cannot remove nonsecurity personal property from custodial properties, unless it cannot be safely stored, there are hazards that threaten the personal property (such as a leaking roof), or the personal property itself presents a hazard (such as flammables or explosives).

B. REO Property

1. Notice to Owners or Lien Holders of Personal Property

If the property is not retrieved after the initial notification, a certified letter should be sent, return receipt requested, notifying the owner or lien holder of the date on which the Agency will dispose of the property, that the property may be retrieved before the disposition upon payment of any expenses incurred by the Agency related to the personal property, such as advertisement or storage.

2. Disposal of Unclaimed Property

The Field Office will dispose of unclaimed property in accordance with its value and conforming with local practices. For example, if there are items of significant value, an advertisement may be placed in the local newspaper.

3. Income from Disposition

Proceeds from the sale of items under lien should be paid to any owner or lien holder after deducting Agency selling expenses. If there is no known owner or lien holder, proceeds are applied to the REO account.

15.6 TAXES AND INSURANCE

A. Taxes

REO property is subject to Real Estate taxation by State and local political jurisdictions in the same manner and to the same extent as other



Paragraph 15.6 Taxes and Insurance

properties, unless State law specifically exempts property owned by the Federal Government. If a jurisdiction changes the law to begin taxing Government-owned property, only taxes accruing after the effective date of the change will be paid. The Field Office will notify the taxing authority, in writing, when title to real estate is acquired and provide the Field Office address to which tax bills should be sent during Agency ownership.

If the value of the property is significantly less than the value at which it is being taxed, as soon as it is acquired, the Agency may request a new assessment by the local taxing authority.

If property is acquired subject to a prior lien, before the Agency pays taxes, the Field Office will contact the prior lien holder to determine if that lien holder will pay the taxes. Taxes on program property are paid when due. Taxes on nonprogram property may be deferred until the property is sold if the taxes that accrue before disposition may exceed the value of the property. If the taxing authority schedules a tax sale before the Agency can sell the property, Field Staff should calculate and compare the net recovery values that would result from paying the taxes and continuing sales efforts or letting the property be sold for delinquent taxes to determine which approach is in the Government's best interest. See Appendix 11 for a net recovery value worksheet.

B. Insurance

1. Custodial Property

Insurance on custodial property will not be canceled. The Agency will not pay additional premiums to continue coverage.

2. REO Property

Insurance will not be canceled when property is acquired. However, the Agency will not pay additional premiums to continue coverage. If it is necessary to file a claim, Field Staff should submit the claim and direct that insurance proceeds be forwarded to CSC.

15.7 ENVIRONMENTAL REQUIREMENTS

The Agency must complete the appropriate level of environmental review under the National Environmental Policy Act for proposed management activities involving custodial and REO properties in accordance with RD Instruction 1940-G.



Management activities subject to environmental review include repair and maintenance activities as well as leasing of custodial and REO property.

Repair and maintenance activities will normally qualify as categorical exclusions provided the proposed action will not alter the purpose, operation, location, or design of the project as originally approved. Leasing of custodial and REO property will normally qualify as a categorical exclusion provided the proposed action is not controversial for environmental reasons and will not result in a change in use of the property in the reasonably foreseeable future. Refer to RD Instruction 1940-G for further direction.



When certain environmental resources are present or when certain conditions exist, specific limitations or constraints are imposed by environmental law on the Agency's repair and maintenance activities and leasing activities. In such cases, an Environmental Assessment (EA) rather than a categorical exclusion, may be required to address the situation properly. Consultation with the State Environmental Coordinator is recommended before proceeding in the following circumstances.

A. Repair and Maintenance Activities

1. Coastal Barrier Resources System (CBRS)

Any action proposed to be taken on a custodial or REO property within a CBRS must be coordinated with the State Environmental Coordinator and the Regional Director of the U.S. Fish and Wildlife Service (USFWS). In emergency situations to prevent imminent loss of life, imminent substantial damage to the inventory property, or the disruption of utility services, minimum steps necessary to prevent such loss or damage may be taken without first consulting the USFWS as long as the Regional Director of the Service is immediately notified of the emergency action taken.

Maintenance or repair is prohibited for property located within a CBRS if:

- The action goes beyond maintenance, replacement-in-kind, reconstruction, or repair and would result in the expansion of any roads, structures or facilities;
- The action is inconsistent with the purposes of the Coastal Barrier Resources Act (CBRA) 16 U.S.C. 3501. et. seq.; or

Paragraph 15.7 Environmental Requirements

- The property to be repaired or maintained was initially the subject of a financial transaction that violated the CBRA.

The Administrator should be asked to review any cases where the Agency and the USFWS disagree on the effect of a plan of action or where otherwise prohibited maintenance and repair must be undertaken. Approval for action will not be granted unless the Administrator determines, through consultation with the Department of Interior, that the proposed action does not violate the provisions of the CBRA.

2. Historic and Archaeological Resources

Properties that are listed or eligible for listing on the National Register of Historic Places, in whole or in part, will be repaired as necessary to protect their historic integrity after consultation with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation. If a property is listed or eligible for listing on the Register and also is located within the CBRS, the property cannot be repaired without the prior approval of the USFWS.

Field Staff will review the current Register to determine if the property is listed. If the property is not listed, the Field Staff will consult with the SHPO when the property is considered potentially eligible for the Register. A property is considered potentially eligible if it contains a structure more than 50 years of age or, regardless of age, if the property is known to be of historic or archeological importance, or has apparent significant architectural features.

3. Floodplains and Wetlands

If the Agency is considering a substantial improvement or repair to custodial or REO property located in a flood plain or wetland, the Agency must first consider whether there are practicable alternatives to such further investment in the floodplain or wetland area. For example:

- Could the property be sold “as is” with notice of floodplain/wetland hazard?
- Could the property be sold “as is” with a requirement that the structure be removed from the site?
- Could the Agency remove the structure first and sell the land with notice of hazard?

If there are no practical alternatives to the substantial improvements, then the Agency may proceed with the improvements, provided it includes any practical mitigation measures. On an existing structure, mitigation will generally involve some form of floodproofing, such as elevating hot water tanks, or heating and ventilation units.

A substantial improvement is defined as any improvement the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the repair is started, or (2) if the structure has been damaged, before the damage occurred. The cost of compliance with health, sanitary and safety codes is not included in the calculation of the substantial improvement cost, nor is the cost of repair to an historic structure included. If the repairs do not qualify as substantial, the Agency does not need to search for alternatives or mitigation measures.

4. Reportable Underground Storage Tanks

Properties that contain certain types of underground storage tanks must be reported to the State agency identified by the Environmental Protection Agency (EPA) within 30 days of Agency acquisition. Attachment 15-A provides a list of those underground storage tanks which must be reported and those which are exempt from reporting requirements. A State Supplement will provide the necessary EPA forms or acceptable State forms that may be used to accomplish the reporting, as well as detailing any additional State reporting requirements. A copy of the report must be maintained in the REO file, and any prospective buyers of the property must be furnished with a copy of the report.



B. Lease or Management Contract

1. Historic and Archaeological Resources

A property that is listed or eligible for listing on the National Register of Historic Places may be leased or operated by management contract only after the Agency and the SHPO determine that the lease or contract will adequately ensure the property's condition and historic character.

2. Floodplains and Wetlands

Before executing a lease for a property containing wetlands or located in a special flood or mudslide hazard area identified by the Federal Emergency Management Agency (FEMA), Field Staff must provide written notice of the hazard to the lessee. The notice

must be attached to the lease. Any management contract must require the contractor to fulfill this obligation.

The lease or management contract for custodial or REO property containing wetlands or located in a floodplain area will also specify any uses of the property by the lessee or tenant that are restricted under any Federal, State or local floodplain and wetland regulations, as well as other appropriate restrictions. Examples of use restrictions would include prohibition of draining or filling of floodplain or wetland areas, and prohibitions of new above-ground construction on that portion of the property located in the floodplain or wetland area.

3. Hazardous Substance Activity - Notification

All property considered for lease must be evaluated for possible hazardous substance contamination. To do this, the Loan Approval official completes the *Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ)*, the initial level of inquiry in the due diligence process. (If a TSQ was completed prior to acquisition of the property, the Loan Approval Official must determine if the TSQ should be updated.) If the completed or updated TSQ indicates potential contamination, it will be sent promptly to the State Environmental Coordinator for further evaluation and guidance. All clean-up actions will be taken under the guidance of the State Environmental Coordinator. For further information or notification, refer to Paragraph 16.18.

15.8 MANAGEMENT OF HAZARDOUS SUBSTANCES

A reasonable and prudent attempt will be made to minimize the Agency's liability under hazardous substance and hazardous waste laws, and a diligent effort will be made to evaluate economic risks to real estate posed by the presence of contamination from hazardous substances, hazardous wastes, and petroleum products, including underground storage tanks. The elements of potential liability and economic risk are addressed by the Agency by performing due diligence.

Due diligence is the process of inquiring into the environmental condition of real estate in the context of a real estate transaction to determine the presence of contamination from hazardous substances, hazardous wastes, and petroleum products, and what impact such contamination may have on the market value of the property.

The Loan Approval Official initiates due diligence by completing the *Transaction Screen Questionnaire, ASTM Standard E-1528 (TSQ)*, the initial level of inquiry in the due diligence process. If the completed TSQ indicates a potential for contamination, it will be sent promptly to the State Environmental Coordinator for further evaluation and guidance.

For all servicing actions that require a determination of market value, the appropriate level of due diligence will be performed in conjunction with the appraisal. Due diligence also must be performed in conjunction with any servicing action that may lead to acquisition of security property.

The Loan Approval Official should be aware of suspicious situations during security inspections of custodial and REO property. If unauthorized dumping of potentially hazardous material is noted, due diligence will be performed.

To minimize the Agency's liability, any response action taken by the Agency in responding to a release or threatened release of hazardous substances or petroleum products on inventory property will be taken in consultation with and at the recommendation of the appropriate environmental regulatory authority. In the case of custodial property, the State Environmental Coordinator may initiate, as necessary, limited emergency response actions to stabilize an emergency or imminent and substantial threat to human health and the environment.

If the Agency is notified or made aware of the presence of an underground storage tank on custodial or REO property, the Loan Approval Official will ensure that the tank complies with appropriate environmental regulatory authority requirements or is removed. When reinstalling a fuel storage system, aboveground storage tanks should be used where feasible.

15.9 PHYSICAL MAINTENANCE AND REPAIR

Custodial property will be maintained and repaired only as needed to protect the security of the property and to prevent deterioration. In the event of damage or theft, the procedures described under Paragraph 15.9 A. should be followed.

REO property will be broom swept, free of trash and debris outside and maintained and repaired as needed to ensure the safety of potential buyers or contractors. Other repairs, including but not limited to those that improve the property to decent, safe, and sanitary (DSS) standards, or are needed to mitigate a negative effect on neighboring property may be made if Field Staff determine them to be necessary to market the property expediently, and they increase the market value by approximately the cost of the repairs.

A. Vandalism and Theft

Field Staff will report willful damage or theft to the local law enforcement authorities and in whatever manner necessary, to attempt to resolve the incident, including signing complaints and testifying at hearings or trials.

Paragraph 15.9 Physical Maintenance and Repair

Field staff should send a written report of the incident to the State Director and copies to CSC and the Regional Office of the Inspector General (OIG). The State Director, in consultation with the OGC as necessary, will advise and assist the Field Staff.

Damage to REO program property as a result of vandalism and theft may be repaired as necessary to continue marketing. Repairs may include cost-effective improvements to minimize the likelihood of future damage, such as increased lighting, security fencing and removal of shrubs that limit visibility. Nonprogram property should be broom swept but generally will not be repaired unless necessary to prevent deterioration. Custodial property should be repaired only to protect the security and to prevent deterioration.

B. Off-Site Repairs or Improvements

The Agency may require off-site repairs or improvements to protect property from damage, to protect the Government's interest, or to enhance the marketability of property. In the case of multiple REO units in a subdivision, such improvements may include construction or reconstruction of roads, sewers, utility lines, subdivision entries, street signs, or central mail receptacles.

Off-site improvements must be approved by the Deputy Administrator, Single Family Housing. To obtain approval, Field Staff must prepare a justification that demonstrates failure to make the improvements would likely result in a property net recovery value loss greater than the expenditure and that there are no other feasible means with State or local entities, to accomplish the same result.

To obtain off-site improvements, the Agency may enter into a contract with a private company or enter into a cooperative agreement with a State or local government or other entity to obtain repairs or improvements. Under a cooperative agreement, the entity will provide money, property, services, or other items of value to the entity to accomplish a public purpose. While cooperative agreements are not a contract action, the authority, responsibility, and administration of a cooperative agreement must be consistent with contract action. The OGC should be consulted when a cooperative agreement is considered.

C. Lead-Based Paint Disclosure

The Residential Lead Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4822 et seq., requires lessors of housing built before 1978 who receive Federal assistance to provide the lessees with information about the housing's lead history and general information on lead exposure prevention.

Specifically, before the lessee becomes obligated under any contract to lease the housing, Field Staff must:

- Complete the Lead-Based Compliance Key, which can be found at: http://teamrd.usda.gov/rd/rhs/PSS/Lead_Paint/lead_based_paint_key.htm .
- Provide the lessee with the lead hazard information pamphlet, *Protect Your Family from Lead in Your Home*, available from the National Lead Information Clearinghouse at 1-800-424-LEAD, or a similar EPA-approved pamphlet developed by the State; and
- Disclose the presence of known lead-based paint and/or lead-based hazards in such housing and provide the lessee with any lead hazard evaluation report available to the Agency.
- Make sure that the requirements of 24 CFR Part 35, Subparts A, B, and C have been met.

SECTION 2: SPECIAL USES

15.10 LEASING CUSTODIALS AND REO

Generally, neither REO nor custodial property is leased. However, in special cases, such as when custodial property is subject to lengthy liquidation proceedings or legal problems prohibit the immediate sale of an REO property, the property may be leased. Custodial property cannot be leased if extensive repairs are necessary in order for it to be inhabitable. Properties subject to redemption rights cannot be leased unless the State Director obtains prior approval from OGC. Property which does not meet decent, safe and sanitary standards will not be leased.

It is preferable to lease the property to an intended buyer. The Agency may require a prospective renter to make a purchase offer, and submit an application for credit and a credit report paid for by the applicant. The rent charged should be a market rent equivalent to rents of similar properties in the area. If the lessee is a program applicant, the monthly rent may be based on the estimated monthly loan payment taking into consideration any payment assistance, plus 1/12 the sum of the estimated real estate taxes, property insurance, and maintenance payable by a homeowner. In no case will a lease be for a token amount, even if the tenant is willing to barter for maintenance or repair services.

A lease form approved by OGC will be used. A copy of the lease should be sent to CSC, where a lease account will be established in the lessee's name.

When a lease is terminated, or when the property is sold before expiration of the term shown on the lease submitted to CSC, the Field Staff must notify CSC of the termination and the effective date of the termination.

A. Security Deposits

The Agency requires a security deposit of one month's rent, except from nonprofit organizations or public bodies. Security deposits are remitted to CSC. When a tenant vacates the property, Field Staff sends a memorandum to CSC asking for the return of the deposit to the Field Office for delivery to the lessee. If the deposit is to be retained by the Agency, it is applied to the borrower's account for custodial property or to the REO account, as appropriate.

B. Costs and Income

Expenditures on leased custodial properties are charged to the borrower's account. Expenditures on REO property are charged to the REO account. The Agency does not pay utilities or any other costs of operation of leased property. Lease proceeds for custodial properties are applied to the borrower's account. Proceeds for custodial properties are applied to the borrower's account.



15.11 SPECIAL USES OF REO

A. Transitional Housing for the Homeless

The Agency has entered into a Memorandum of Understanding with the U.S. Department of Health and Human Services (HHS) (see Attachment 15-B) that states that HHS will direct community groups to the Agency to identify specific REO properties that may be available as shelter projects. Nonprogram REO property may be leased for up to 10 years to nonprofit organizations as transitional housing for the homeless for \$1.00 per year. The lessee assumes responsibility for real estate taxes on the leased property, any needed repairs to the property, and regular maintenance of the property.

Leases executed under this program must make the local nonprofit organization responsible for all liabilities and costs arising out of the habitation of the property. The Agency must inspect the property after the lease is executed to ensure that property is being maintained and used for its intended purposes. Inspections should be made at least yearly thereafter.

Attachment 15-C includes a fact sheet that can be used by both the Agency and entities interested in using REO property for the homeless and Attachment 15-D contains a sample lease.

B. Use by Federal Emergency Management Agency (FEMA)

By a Memorandum of Understanding between the Agency and FEMA (see Attachment 15-E), REO property which is not under lease or sales agreement is available to shelter disaster victims in an area designated as a major disaster area by the President. In such an event, FEMA assumes responsibility for all costs associated with inhabiting the dwelling.

FEMA and the Agency must sign a "Letter of Assignment," (see Attachment 15-F) which includes a mutually agreed upon inspection report outlining the condition of the property being assigned to FEMA. Field Staff should retain the Letter of Assignment in the REO file. No rent is paid by FEMA for the first 12 months from the date of the letter of assignment of the housing. Beyond that, FEMA pays the monthly fair market rental value as determined by the Agency.

C. Mineral Leases

When it is in the best interest of the Government, the Agency may lease mineral rights. OGC should be contacted for assistance in preparing the lease agreement. The appropriate level of environmental review must be completed prior to any agreement to lease mineral rights. Since such actions may be controversial and may have the potential for significant impact on the environment, prior consultation with the State Environmental Coordinator is required.

ATTACHMENT 15-A

UNDERGROUND STORAGE TANKS THAT MUST BE REPORTED

- A. Underground storage tanks that meet the following criteria must be reported in 2 types of situations.
1. **Situation 1**
 - A tank, or combination of tanks (including pipes which are connected thereto), of which the volume is 10 percent or more beneath the surface of the ground, including the volume of the underground pipes; and
 - The tank is not exempt from reporting requirements under Paragraph B. of this attachment, and
 - The tank contains petroleum or substances defined as hazardous under section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601. The State Environmental Coordinator should be consulted whenever there is a question regarding the presence of a regulated substance.
 2. **Situation 2.** It is known that the tank contained a regulated substance, was taken out of operation by the Agency since January 1, 1974, and remains in the ground.
- B. Underground storage tanks that are exempt from the Environmental Protection Agency (EPA) reporting include:
- Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
 - Tanks used for storing heating oil for consumptive use on the premises where stored;
 - Septic tanks;
 - Pipeline facilities (including gathering lines) regulated under: (1) the Natural Gas Pipeline Safety Act of 1968; (2) the Hazardous Liquid Pipeline Safety Act of 1979; or (3) for an intrastate pipeline facility, regulated under State laws comparable to the provisions of law referred to in (1) or (2);

- Surface impoundments, pits, ponds, or lagoons;
- Storm water or wastewater collection systems;
- Flow-through process tanks;
- Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
- Storage tanks situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

Even if a storage tank does not need to be reported according to these criteria, if the Agency has reason to believe there has been a release of petroleum or other regulated substance from an underground storage tank on a real estate owned (REO) property, this incident must be reported to the appropriate State Agency and the State Environmental Coordinator who will inform the State Office of the appropriate action to take.

ATTACHMENT 15-B

**MEMORANDUM OF UNDERSTANDING
BETWEEN
UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)
AND
DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

For the efficient and orderly implementation of this agreement it is mutually agreed:

1. HHS will request the support of the Farmers Home Administration (FmHA), an Agency of USDA to lease or otherwise make available vacant rural single family homes or like facilities to community nonprofit organizations interested in initiating shelter projects.
2. The FmHA will identify necessary actions to be taken to implement the program. Therefore, HHS will notify community groups of the program and of the required procedures.
3. FmHA and HHS have agreed on the following policy guidelines to properly structure the program:
 - a. HHS will identify and respond to community interest and initiatives;
 - b. HHS will request local government support;
 - c. HHS will direct community groups to FmHA County Supervisors to identify specific facilities within the FmHA inventory; and
 - d. FmHA County Supervisors will be given the authority, as deemed appropriate by FmHA, to process lease agreements and increase or decrease the number of facility units available for lease.
4. Leases executed under this program shall be with local nonprofit community organizations and shall make such organizations responsible for all liabilities arising out of the habitation of the particular facility and for all costs incident to and associated with the habitation of the particular facility (e.g., renovation, maintenance, security, etc.).

5. The FmHA will provide the criteria for leasing rural facilities in accordance with FmHA housing regulations.
6. Any documentation required to measure or assess the results of the program will be the responsibility of HHS. Such information will be made available to FmHA upon request.

/s/ Margaret M. Heckler
Department of Health and Human Services

/s/ John R. Bluch
United States Department of Agriculture

ATTACHMENT 15-C

FACT SHEET

THE FEDERAL INTERAGENCY TASK FORCE ON FOOD AND SHELTER FOR THE HOMELESS

In April 1984, a Task Force on Food and Shelter for the Homeless was established under the President's Council on Private Sector Initiatives. This Task Force, which includes representation from several Government Agencies including the Rural Housing Service (RHS) (formerly FmHA), is responsible for developing and examining Federal resources such as Government inventory properties which may be utilized by the homeless. A Memorandum of Understanding was established between the Department of Agriculture and the Department of Health and Human Services to make available vacant single family houses, by lease, to public bodies and nonprofit organizations for transitional housing for the homeless. In lieu of cash rent, the entity is required to maintain the property, pay real estate taxes and maintain property insurance.

RHS is committed to working with community based organizations in this regard to the extent practicable.

General Guidelines

1. Only nonprogram RHS real estate owned (REO) properties are available for lease. RHS classifies a property as nonprogram property when it does not meet the single family program standards, generally because it has been enlarged or improved so that its value is above program standards or because it would require major renovation or redesign to be brought to program standards.
2. Leases of nonprogram properties will be for a period of up to 10 years. A 10-year lease may be necessary for the public body or nonprofit organization to obtain transitional housing funds from the Department of Housing and Urban Development (HUD).

RHS Responsibilities

1. Upon request from a public body or nonprofit organization, RHS will provide a list of all REO properties available for sale. The list will clearly identify which properties are classified as “program” (and therefore ineligible for leasing) and “nonprogram.” The list will be provided regardless of whether the properties are listed for sale with real estate brokers.
2. If a public body or nonprofit organization approaches RHS to lease a specific property, upon written notification of intent to lease, RHS will withdraw the property from sale for a period not to exceed 30 days to provide such entity with the opportunity to execute a formal lease. RHS will make a determination as to repairs and/or renovations necessary for the property to meet “decent, safe and sanitary” (DSS) standards. Repairs/renovations will be limited to those necessary to remove health and safety hazards and provide adequate, safe and operable heating, plumbing, electrical, water and waste disposal systems. Cosmetic repairs such as painting, landscaping, floor covering, etc., will not be considered unless they present health or safety hazard. If RHS determines the proposed repairs/renovations are reasonable in cost, RHS will contract to have said work performed upon after execution of a formal lease. If repairs/renovations costs are excessive the public body or nonprofit organization will be asked to select another property for lease. If no such properties are available, and none are expected in the foreseeable future, the State Office will obtain further guidance from the Single Family Housing Servicing and Property Management (SFHSPM) Division in the National Office.
3. RHS will inspect the property after the lease is executed to ensure the property is being maintained and used for its intended purposes. Inspections will be made at least yearly.

Public Body or Nonprofit Organization Responsibilities

1. Contact RHS when interested in leasing or purchasing RHS REO property to provide transitional housing for the homeless.
 2. When leasing is contemplated, provide RHS with documentation of the need for this type housing in the community and planned use. Documentation should include verification of the need for the type housing, financial statements verifying the entity’s ability to make cosmetic repairs, if needed, maintain the property, pay utilities, real estate taxes, insurance, etc., proposed use of the property, sample lease or occupancy agreement for potential occupants, nondiscrimination policy, etc. The public body or nonprofit organization should provide all necessary documentation to RHS to assure success of the project.
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3. Use any property in a prudent manner for its intended purpose. Maintain the property in good condition, ensuring the exterior and lot are maintained consistent with other properties in the area. Comply with all State and local laws, ordinances, etc. regarding use of residential property. Maintain adequate records relating to the use of the property. Allow RHS to inspect the property annually at reasonable times and review records to ensure the property is being utilized for its intended use.
4. When the need for such property no longer exists, advise RHS of the intent to terminate the lease. Return the property in the same or better condition than when the lease was executed.

ATTACHMENT 15-D

LEASE OF SINGLE FAMILY DWELLING

THIS LEASE is made and entered into this _____ day of _____, 20____, by and between the United States of America acting through the Rural Housing Service (RHS) of the Rural Development mission area (hereinafter referred to as "LESSOR") and _____ (hereinafter referred to as "LESSEE").

RECITALS:

UNDER PROVISIONS OF the Housing Act of 1949, as amended, and in keeping with agreements with the Federal Interagency Task Force on Food and Shelter for the Homeless to provide transitional housing for the homeless in rural areas, AND, in consideration of the covenants and agreements herein contained to be done, kept and performed, the parties hereto agree as follows:

(1) **Premises.** LESSOR hereby leases the PREMISES, known as _____

City of _____, County of _____, State of _____, to LESSEE and LESSEE hereby leases the PREMISES from LESSOR for the term and upon the covenants and conditions set forth herein.

(2) **Term.** The term of this lease shall be for a period of _____ () year(s) commencing on the _____ day of _____, 20____, and ending on the last calendar year of _____, 20____, unless sooner terminated under any applicable provisions of this Lease. This lease may be extended on a month-to-month basis after the termination date of this lease with prior written consent of the LESSOR and LESSEE.

(3) **Payments.** In consideration of ONE DOLLAR, in hand paid at the time of execution of the lease, and the following requirements to be performed by LESSEE, LESSOR agrees it will have received adequate compensation from LESSEE, and LESSEE agrees to the following:

- a. LESSEE shall be responsible for all taxes and assessments levied on the PREMISES as of the date of this LEASE. The LESSEE shall reimburse the LESSOR for any taxes and assessments which have or will be prepaid by the LESSOR through a proration of such taxes and assessments. LESSEE shall pay taxes and assessments directly to the payee and provide documentation of such payment to the LESSOR, or may provide such funds directly to the LESSOR at least 30 days prior to the due date. LESSEE will pay all taxes and assessments in a timely manner.

- b. Within forty-five (45) days after execution of this Lease, or other reasonable time period mutually agreed to in writing between the parties herein, the LESSEE, at the LESSEE's sole expense, shall make any further repairs, with prior approval of the LESSOR, as LESSEE determines necessary to make the property habitable.
- c. LESSEE, at its sole expense, shall ensure the PREMISES are maintained, repaired, and kept in a clean sanitary condition during the term of this Lease.
- d. LESSEE shall be responsible for all utility costs incurred on the PREMISES during the term of this Lease.

(4) Use. The LESSEE shall utilize the premises only for the purpose of providing transitional housing for homeless persons and will not charge such persons a rental or occupancy charge greater than the costs incurred by LESSEE in compliance with the provisions of paragraph 3, plus a reasonable amount for administrative costs.

(5) Hold Harmless. The LESSEE shall indemnify and save harmless the LESSOR, its officers, agents, servants and employees from all liability under the Federal Tort Claims Act (62 Stat. 869, 982; 28 U.S.C. Sec. 2071, 2680) or otherwise, for death or injury to all persons, or loss or damage to the property of all persons resulting from use of the premises by the LESSEE, its sublessees or licensees. Further, LESSEE will save the LESSOR harmless from all fines, penalties, and costs for violation or noncompliance with any of said laws, requirements, or regulations, and from all liability arising out of any such violation or noncompliance.

(6) Damage or Destruction. In the event any damage or destruction to the property shall be caused by its acts or neglect of its sublessees or licensees, the LESSEE shall forthwith repair such damage at its own expense, and should the LESSEE fail or refuse to make such repairs within a reasonable time after the occurrence of such damage, the LESSOR may at Lessor's option terminate this lease, make such repairs and charge the cost thereof to the LESSEE, and the LESSEE, shall thereupon reimburse the LESSOR for the total cost of all damages so caused. In the event LESSEE insures the PREMISES against loss by fire and other hazards, LESSOR shall be named as a co-beneficiary. Further, in the event that the PREMISES are damaged or destroyed through no act nor neglect of LESSEE its sublessees and licensees and are reentered untenable, this Lease shall be terminated upon receipt of written notice of either party to the other.

(7) Delivery of Possession. At the end of the term of this Lease, LESSEE shall surrender said premises vacant to the LESSOR and in a habitable condition as defined in paragraph 3.b. except if the lessor so directs it will be boarded up and secured. No alteration, addition, or improvements shall be made in or to the premises without the consent of the LESSOR in writing, except for maintenance items, and all additions and improvements by the LESSEE shall belong to the LESSOR. All goods and chattels placed or stored in or about the premises are at the risk of the LESSEE.

(8) Lessor's Remedies. The LESSEE further agrees that if it should fail to comply with any other all provisions of this agreement, then in any of said cases, it shall be lawful for the LESSOR, at its election or option, to re-enter and take possession, the LESSEE hereby expressly waiving any and all notices to vacate said premises, and thereupon this lease shall absolutely terminate; however, the failure of the LESSOR to insist upon the strict performance of the terms, covenants, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the Lessor's right thereafter to enforce any such term, covenant, agreement, or condition, but the same shall continue in full Force and effect.

(9) No Member of Congress to Benefit. No member of, or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit that may arise therefrom.

(10) Warranty Against Use of Agents. The LESSEE warrants that it has not employed any person to solicit or secure this lease upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the LESSOR the right to annual this lease or in its discretion to recover from the LESSEE the amount of such commission, percentage, brokerage or contingent fee in addition to the condition herein set forth.

(11) Nondiscrimination. The LESSEE agrees not to discriminate against any employee or applicant for employment, or against any individual seeking housing, because of race, color, religion, national origin, sex, marital status, handicap, or age.

THIS LEASE contains the entire agreement between the parties hereto, and neither party is bound by any representations or agreements of any kind except as herein contained.

USDA, RURAL DEVELOPMENT
RURAL HOUSING SERVICE, LESSOR

By: _____

(Typed Name) (Title)

(Address)

Telephone: (_____)_____

By: _____

(Typed Name) State Director

(Address)

Telephone: (_____)_____

ATTACHMENT 15-E

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
FEDERAL EMERGENCY MANAGEMENT AGENCY
AND THE
FARMERS HOME ADMINISTRATION**

Purpose

This Memorandum of Understanding establishes authorities and procedures whereby the Federal Emergency Management Agency (FEMA) may utilize both single family and multiple housing units which are habitable, and to which the Farmers Home Administration (FmHA), an Agency of the U.S. Department of Agriculture (USDA), has title and possession. The housing units assigned to FEMA by FmHA are to provide temporary housing to victims of major disasters or emergencies declared by the President, in accordance with sections 302(a) and 404(a) of Public law 93-288, the Disaster Relief Act of 1974.

Effective Date of this Memorandum

This memorandum shall be effective on the date of the last signature hereto.

Duration of Agreement

This memorandum shall continue to be in effect for a period coinciding with the authority under which it is entered.

Modifications

This Memorandum of Understanding and its attachments may be modified in writing by mutual consent of the parties.

Responsibilities

FmHA shall make available to FEMA on request habitable single family and multiple housing units in its inventory that are located in designated disaster areas and that are not under lease or under agreement of sale. FEMA will reimburse FmHA for authorized expenses, as set out herein, resulting from utilization of assigned housing units.

Implementation

This memorandum shall be implemented in accordance with the following general procedures. FEMA and/or FmHA may prepare other detailed operating procedures as necessary for internal use of the agencies. These latter procedures will be in compliance with the provisions of this Memorandum.

(a) Delegation of Authority. The signatories to this agreement will delegate authority to implement this agreement to their respective employees, in writing. When a disaster occurs, the persons to whom this authority has been delegated shall identify employees, contractors, and agents authorized to implement the appropriate provisions of this Memorandum of Understanding and other FEMA and/or FmHA detailed operating procedures. FEMA and FmHA will exchange a list containing names, addresses, and telephone numbers of such employees, contractors and agents, who will implement the agreement with respect to the specific major disaster. Other references to FEMA and FmHA in the following paragraphs will be interpreted to include contractors, agents, and employees designated to implement the provisions of this Memorandum of Understanding.

(b) Assignment of FmHA Housing Units to FEMA

- (1) Upon declaration by the President of a major disaster or emergency, FEMA may request from the appropriate FmHA State Director a list of all habitable housing units available in designated disaster areas indicating the county or counties where housing is needed..
 - (2) At its discretion, FmHA may sell or lease until directly to displaced FmHA borrowers instead of providing them to FEMA. FmHA will provide FEMA a list of such sales or leases for information purposes and to prevent duplication of benefits.
 - (3) During the period of occupancy of a housing unit by a disaster victim, FEMA will inform the occupant that FmHA lending assistance may be available for purchase of the housing unit as permanent housing.
 - (4) Before assignment to FEMA and occupancy by a disaster victim, each housing unit under consideration will be inspected jointly by FmHA and FEMA. The agencies will then execute a Letter of Assignment for each habitable housing unit assigned to FEMA. A Preoccupancy and Termination Joint Inspection report (FEMA Form 90-11) will be prepared, signed by both agencies, and attached to the letter of assignment. The FmHA advice number will be noted prominently on this form.
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- (5) FmHA will remove all RHS signs, such as “no trespassing,” “for sale,” etc. from housing units assigned to FEMA.

Management of Housing Units

- (a) Necessary maintenance on housing units assigned to FEMA shall be performed by FEMA at its expense, or FEMA shall reimburse FmHA for accomplishing such maintenance as agreed upon by local agency representatives.
- (b) FEMA shall furnish to FmHA the names and mailing addresses of unit occupants, the property designation, the beginning occupancy date, and notice of changes in occupancy.
- (c) During business hours FmHA authorized employees may inspect housing units. Advance notice of forty-eight (48) hours will be given to FEMA, who will, in turn, advise the occupant.
- (d) FEMA shall not permit a disaster victim to occupy a housing unit beyond the period of eligibility in accordance with 44 CFR 205.52.
- (e) There shall be no rental charge to FEMA by FmHA for assigned housing units for the first twelve (12) months from the date of the letter of assignment. If a housing unit is assigned to FEMA for more than one year after the date of the letter of assignment, FEMA shall pay FmHA the fair market rental value as determined by FmHA for each subsequent month.
- (f) If an occupancy fails to vacate a housing unit after housing benefits are terminated, FEMA shall conduct the predetermination procedures in 44 CFR 205.52 and shall, if appropriate, undertake eviction action.

Return of Housing Units to FmHA

- (a) When a housing unit is vacated and FEMA determines that it is no longer needed, FEMA shall notify FmHA.
- (b) FEMA and FmHA authorized employees, contractors, or agents will jointly inspect the vacated housing unit to determine maintenance, cleanup, and repairs required to return the housing unit to a physical condition comparable to that existing at the time of the initial joint inspection. Necessary maintenance and repairs shall be performed by FEMA at its expense, or FEMA shall reimburse FmHA for accomplishing such repairs as agreed upon by local agency representatives. Repairs shall be in accordance with local, State, or Federal codes.

(c) FEMA shall return the keys to, custody of, and responsibility for units to FmHA when needed maintenance, cleanup and repairs are completed. FmHA shall prepare a receipt and provide a copy to FEMA.

Approvals

This agreement is executed by the Administrator, Farmers Home Administration, USDA and the Associate Director, State and Local Programs and Support, FEMA, by virtue of their general authorities to do so.

_____/s/ Charles W. Shuman

_____/s/ Lee M. Thomas

Administrator
Farmers Home Administration
U.S. Department of Agriculture

Associate Director
State and Local Programs and Support
Federal Emergency Management Agency

Date: 11/3/82

Date: 10/4/82

ATTACHMENT 15-F
FEDERAL EMERGENCY MANAGEMENT AGENCY
and the
RURAL HOUSING SERVICE
FEMA-RHS LETTER OF ASSIGNMENT

STATE: _____

COUNTY: _____

Under the Memorandum of Understanding between the Federal Emergency Management Agency (FEMA) and the Farmers Home Administration (now the Rural Housing Service [RHS]) effective November 3, 1982, the habitable housing unit identified on the attached inspection report is made available by RHS for use by FEMA or its Agent as temporary housing for victim(s) located within the following described designated disaster area and who are eligible for such assistance under the provisions of the Disaster Relief Act of 1974:

This Letter of Assignment shall become effective on the date signed by the authorized employees, contractors, or agents. This assignment is for the housing unit identified by the attached inspection report and having the following advice number:

_____.

FEMA

RHS

NAME: _____

TITLE: _____

DATE: _____
