Managing Debt to Prepare for a Farm Transfer

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Passing on the Family Farm

For most family farmers, passing a successful farming operation on to the next generation is an important concern. This can ensure children and other surviving family members have a source of potential future income. And, for many family farmers, providing for succession of the farm operation is also essential to maintaining ownership of land that is significant to preserving a particular heritage and way of life.

Introduction to Estate Planning

Estate planning is the process by which a person plans for transferring his or her assets at death. State law governs most aspects of a person's estate plan.

Generally, if a person does not have an estate plan, the government will distribute his or her property after death through a system called *intestacy*. In intestacy, the state distributes a deceased person's assets by applying a single, one-size-fits-all formula. In many cases, distribution of a farm through intestacy could result in inflexible and complicated shared-ownership arrangements that might hinder efficient management of the farm into the future.

Defining "Estate"
When a person dies, all of that person's property (including real estate, personal possessions, and money) is pooled together in what is called the person's estate. What happens to the assets that make up the estate depends on what legal mechanisms the deceased person has used to plan for the handling of his or her estate after death. In addition, any valid debts that were owed by the deceased person when he or she died may be collected from the assets of the estate—usually before any distributions are made to the deceased person's heirs or beneficiaries.

For many people, the core instrument of an estate plan is a legally written *will* that dictates who receives what property and under what conditions. However, there are several other legal mechanisms that can be used as part of an estate plan. For example, for different reasons a farmer might choose to set up a *trust* to take ownership of the farm. In a trust, the covered property is held by a designated person or entity (called a trustee) for the benefit of someone else (the beneficiary) in accordance with the provisions of a written trust agreement. There are many different kinds of trusts.

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These materials are intended for general educational information only. Transferring a farm operation, during life or at death, raises many legal, financial, and tax issues. Farmers should consult an expert who can provide up-to-date, individualized assistance when planning such a transfer.

Defining "Probate"

Probate in modern usage means the entire process of administering and distributing a deceased person's estate, whether by a will or by intestacy. The process is typically supervised by a court and may include determining the validity of a will. Probate affects some, but not necessarily all, of a person's assets. Non-probate property includes things like annuities or life insurance policies paid directly to a beneficiary other than the deceased person's estate. This non-probate property is said to transfer automatically at death, and therefore is not part of the deceased's

The Impact of Debt on an Estate Plan

Certainly, it is important for a farmer planning for succession of the farm operation to determine and provide for how the farm assets will be distributed upon the farmer's death. However, it is equally critical that a farmer plan for how farm *debt* is handled after the farmer's death. It is essential to plan for the fact that, at death, a person's outstanding debts must be settled by the estate before most distributions can be made to the person's heirs.[1]

Although exact procedures vary by state, the deceased person's creditors typically must be notified of the death of the debtor, and those creditors are entitled to file "claims" against the deceased debtor's estate. If the claim is valid, it will need to be paid out of the assets of the estate—either from money available in the estate itself or by selling off assets of the estate to pay the debt.

Normally, creditors collect their debts out of an estate before the remainder of the estate's assets is divided among the heirs. This means that, although usually a person's heirs will not be personally liable for the deceased person's debts, the estate will be exhausted to repay creditors first, and if there is too much debt, this may mean there is nothing left in the estate for the family to take.

Therefore, in order to accomplish a farm transfer, a farmer's first priority may actually be ensuring the farm itself is operating successfully and sustainably. If a farmer dies with unmanageable debt, the farm assets—including equipment and land—may need to be sold to pay off creditors of the estate. Forced sales such as this are a major contributor to land loss. Therefore, a farmer should both (1) manage debts carefully during life to maintain a successful operation and (2) plan for what may happen to remaining debts at death.

This booklet provides information specifically for farmers who have direct loans from the U.S. Department of Agriculture's Farm Service Agency (FSA). It discusses debt management options for FSA borrowers who may be experiencing financial difficulties. In addition, it provides some detail of how a farmer may seek to transfer an FSA direct loan debt to another person in order to ensure that the operation—and the loan—continue after death.

Seek Individual Assistance when Creating an Estate Plan

Farmers seeking to plan for the succession of a family farm have many business, personal, and legal issues to consider. The transfer of farm assets can have significant tax consequences that may require more complicated planning options. In addition, farmers' estate plans may need to plan for what might occur if the farmer becomes disabled, incapacitated, or otherwise unable to continue to farm during life. Other farmers may seek to plan for a retirement from the farm by transferring the farm operation and assets—perhaps gradually or in stages—to heirs during life.

These materials only highlight a few debt-related issues farmers need to consider when planning to pass on a farm operation. In addition, estate plans must always be tailored to individual circumstances. Therefore, all farmers are urged to seek out expert assistance in designing and executing an actual

Managing Federal Farm Loans During Life

This section summarizes options available to farmers facing default or continuing delinquency on a direct loan from FSA.

Direct FSA farm loans are financed and serviced by the federal government. In other words, the federal government—and not a private bank—is the lender. For farmers with private loans not administered by FSA, individual state laws and the terms of individual loan agreements will control any servicing options. Farmers should contact their lenders to discuss and negotiate what debt relief may be available for private loans.

Loans that are guaranteed by FSA, but administered and funded through a private bank, are somewhat unique. Generally, the management of a guaranteed loan is governed by state law and the terms of the individual loan agreement. However, some federal regulations do also apply. These federal regulations are beyond the scope of these materials and are not discussed here.

Debt Management as an Estate Planning Tool

Carrying large amounts of debt forward to death can create an obstacle for heirs who wish to continue the farming operation. Taking over a farm with significant farm debt is a difficult, and sometimes impossible, task. Therefore, careful financial planning to minimize debt during life may be one of the most important estate planning tools for farmers who seek to transfer a viable farming operation to the next generation.

Farmers with large amounts of debt also run the risk of losing their farm and having nothing to pass on to the next generation, despite their best efforts. If a farmer fails to make payments on a direct loan from FSA, or fails to comply with other terms of the loan agreement, FSA may accelerate the loan account after fulfilling certain procedural requirements. This means FSA will demand full and immediate payment of the whole debt. If the debt is not paid, FSA may then take steps to repossess and sell the collateral used to secure the loan. When a farmer is delinquent, FSA may also use administrative offset to take any money that FSA or other federal agencies owe the farmer and apply those funds to the delinquent debt.

Glossary of Terms

Collateral – Something of value that a borrower offers to a lender to ensure repayment of a loan or other credit. The specific property offered is identified in an agreement in which the borrower promises to turn over the property to the lender if the borrower does not repay the debt as agreed. Also called "security."

Default – Failure to meet the terms of a loan agreement. Can be monetary (failure to make payments as scheduled) or non-monetary (for example, failure to maintain insurance on collateral as required by the loan agreement).

Delinquency – When the borrower is past due on a scheduled loan payment.

Financially distressed – When the borrower will not be able to make payments as planned for the current or next accounting period, or when a borrower cannot project a feasible plan of operation for the next accounting period.

Foreclosure – A legal process by which a lender takes ownership of the pledged collateral to enforce payment of the debt, often selling the collateral and putting the proceeds toward the unpaid debt.

Primary Servicing of Distressed Federal Farm Loans

Before FSA may accelerate a defaulting borrower's loan account, it is required by law to allow the borrower an opportunity to request "loan servicing."[2] This is a process by which borrowers facing default or financial distress who meet certain eligibility requirements may have their debt modified or even reduced to allow continuation of the farming operation.

FSA must provide a defaulting direct loan borrower with a written notice describing the servicing options available, the eligibility criteria, and the process for applying. Borrowers who are not yet delinquent but who are financially distressed may also request the servicing

information and application at any time.

After receipt of the notice of loan servicing programs, borrowers must respond with a completed application within 60 days in order to remain eligible for servicing. This and other deadlines in the loan servicing program are very important. Farmers who fail to meet these deadlines will generally lose their rights to loan servicing. If a borrower does apply within 60 days of receiving the notice, FSA must refrain from accelerating the borrower's account or pursuing other collection actions until a decision has been reached on the borrower's application.

"Primary loan servicing" is FSA's term for various loan restructuring options that allow a borrower to rework debt obligations, arrange for feasible debt repayment, and continue in operation. The chart on page 5 includes a brief summary of the primary loan servicing options available to farmers.

Other Debt Relief Possibilities for Federal Farm Loans

In addition to the loan restructuring options available through the primary loan servicing program, other FSA programs may provide some debt relief that farmers should consider in their financial planning.

Release of Income

Although not technically a loan servicing program, FSA does have an obligation to release its interest in certain collateral for sale when a farmer needs the proceeds to pay for essential family living or farm operating expenses.[3] FSA is only required to release its interest in "normal income security"—a category that includes all crops, livestock, poultry, milk, and other livestock products that are sold in the normal course of business to produce the farm's annual production income. Thus, FSA is not obligated to release its interest in foundation flocks and herds, breeding stock, and equipment.

Appeal Rights

FSA decisions are subject to appeal by the borrower. However, the period for requesting an appeal is short. Farmers should read all of the letters they receive from FSA as these letters should include deadlines that must be observed and information about how to submit an appeal request.

Conservation Contract

A conservation contract enables an eligible borrower to cancel a portion of his or her indebtedness to FSA.[4] In return for this debt relief, the borrower agrees to set aside for conservation, recreation, or wildlife purposes land that is highly erodible, wetland, or wildlife habitat. The amount of debt that may be canceled depends in part on how long the land will be set aside, whether for 10, 30, or 50 years. The land to be set aside must be security for the loan that is in default.

Preservation Loan Servicing

If a borrower is unable to restructure the debt through primary loan servicing, FSA's "preservation loan servicing" may enable the borrower to retain the homestead in the face of liquidation.[5] This is through a program called Homestead Protection, which allows eligible farmers to purchase the homestead and up to ten acres, or to lease the homestead property for up to five years with an option to purchase. If a borrower exercises the purchase option, the sale price will be the appraised current market value of the property.

State law may provide borrowers greater homestead or redemption rights upon foreclosure by a lender. If this is the case, FSA must follow state law.

Debt Settlement

Finally, any direct loan borrower who is in severe financial distress may apply for debt settlement, which can sometimes result in the elimination of the debt for less than the total amount due.[6] There are four types of debt settlement for FSA loans, which are described briefly in the chart on page 6.

Tax Warning

It is critical to explore the tax consequences of any loan servicing arrangement, particularly those involving a discharge of debt or transfer of title to property as these may have a significant impact on the borrower's

Primary Loan Servicing Options

<table>
<tr><th>Type of Debt Servicing</th><th>Effect</th><th>Eligibility</th></tr>
<tr><td>Remortization and Rescheduling</td><td>Extend the payment term on a loan.</td><td rowspan="4">♦ Borrower must show a feasible plan, based on projected cash flows, for repayment of loan after servicing
♦ Servicing must result in FSA recovering more on the loan than FSA would recover by foreclosure
♦ Any delinquency must be due to circumstances beyond the borrower’s control
♦ Borrower must have acted in good faith
♦ Borrower agrees to meet training requirements for production and financial management
♦ FSA must get the best lien obtainable on all other assets if the borrower is delinquent</td></tr>
<tr><td>Consolidation</td><td>Combine two or more loans of same type.</td></tr>
<tr><td>Deferral</td><td>Make no payments for up to five years.</td></tr>
<tr><td>Interest Rate Reduction</td><td>Reduce interest rate on restructured loans.</td></tr>
<tr><td>Write-down</td><td>Reduce the amount of debt owed so the borrower is paying most he or she can afford, including the value of any nonexempt, nonessential assets.
The debt can never be written down below the “net recovery value” of the collateral—the total FSA would recover if collateral were repossessed and sold.</td><td>In addition to above, the borrower:
♦ Must be able to achieve no feasible plan under any other loan servicing option
♦ Must be delinquent on debt
♦ Must not have received any prior FSA debt forgiveness
♦ Must sign a Shared Appreciation Agreement (more information available on FLAG’s Web site at http://www.flaginc.org/topics/saa/index.php)
♦ Must not exceed a lifetime limit in write-downs and write-offs of $300,000</td></tr>
<tr><td>Current Market Value Buy-out</td><td>Gives the borrower an opportunity to buy the loan out at the current market value of the collateral or the balance of unpaid debt—whichever is less.</td><td>Available only if the borrower is not eligible for any other loan servicing.</td></tr>
</table>

Warning for Borrowers Who May Need Additional FSA Credit in the Future

Federal law essentially permits FSA direct loan borrowers only one opportunity to eliminate or write off debt or otherwise receive debt forgiveness for some or all of a federal loan. With limited exceptions, a borrower who causes a loss to the government in this manner will not be eligible for future FSA loans. *See* 7

Debt Settlement Options

Type	Effect	Eligibility	=
Adjustment	Debt is reduced to the fair market value of the collateral, plus any additional amount the borrower is able to pay. Borrower agrees to pay the newly reduced debt over a period not to exceed five years.	If borrower is *unable* to pay the debt: eligible if borrower pays the value of collateral plus any additional amount available. If borrower is *unwilling* to pay the debt: eligible if FSA will not otherwise be able to collect the debt in a reasonable time.	Keep Collateral, Keep Farming
Compromise	Debt is reduced as above, but borrower agrees to pay the newly reduced debt in a lump sum.		
Cancellation	Final discharge of entire debt.	Only available if there is no security property remaining and no other assets that could be used to pay the debt. Other specific eligibility requirements by program.	No Collateral Left
Chargeoff	FSA writes the debt off its books and stops collection efforts, but the borrower remains liable and collection will resume if assets become available.		

Using Bankruptcy to Preserve Farm and Restructure Debt

When a person is overwhelmed by debt and realistically cannot pay it all back, bankruptcy can provide a way to eliminate part of the debt, reorganize the remaining debt, and continue a productive life. The right to bankruptcy is even guaranteed by the United States Constitution.

Bankruptcy can sometimes be an effective tool for farmers facing financial difficulties that threaten to prevent the successful transfer of a farm to the next generation. With careful planning, a farmer may be able to keep significant assets and get the farm's finances in order for his or her heirs, while still continuing to farm. Bankruptcy is available to farmers with direct FSA loans as well as farmers with loans from private lenders.

Credit counseling by an approved credit counseling service will generally be required before a person will be able to file for bankruptcy.

Seek Expert Assistance to Plan and File for Bankruptcy

Deciding whether to file bankruptcy can be very complicated, and careful planning before filing is critical. Many aspects of bankruptcy and pre-bankruptcy planning can also affect a debtor's income taxes. Successful bankruptcy requires the advice of a qualified expert. This guide only provides a brief overview and cannot

Types of Bankruptcy

There are two general types of bankruptcy available to farmers and other debtors. These are liquidation bankruptcy and reorganization bankruptcy. Liquidation bankruptcy is called Chapter 7 bankruptcy. The reorganization bankruptcy specifically designed for family farmers is Chapter 12. Other reorganization bankruptcy types—Chapters 11 and 13—are sometimes also used by farmers.

When a farmer files for a *liquidation* bankruptcy, the farmer's available assets are "liquidated" to cover the farmer's debts. This means that the assets are transferred directly to the farmer's creditors, with the value of the asset applied to the farmer's debt, or the assets are sold and the proceeds from the sale are used to pay off the debts. In general, the farmer then receives a "discharge" of any debts that are not covered by the liquidation of assets. The discharge means that the farmer is no longer legally required to pay those debts.

In a *reorganization* bankruptcy, the farmer proposes a plan to pay his or her debts over a three- to five-year period. The plan is carried out under court supervision and, in general, must result in creditors receiving at least as much as they would have if the farmer liquidated. A farmer who satisfies the requirements of a reorganization plan will receive a discharge of remaining unsecured debt at the end of the plan period, and will continue to make scheduled payments to secured creditors for long-term debts. The farmer is allowed to continue the farming operation during the plan period and, if reorganization is successful, afterwards.

To be eligible for reorganization under Chapter 12, the debtor must be "engaged in a farming operation" and must meet other specific eligibility requirements. These requirements consider the amount of total debt, the percentage of the debt that comes from the farming operation, and the percentage of income that comes from the farming operation.

In many cases, Chapter 12 allows a debtor to reduce a mortgage to the current value of the property, reduce the interest rate to the current market rate interest, and/or extend the payment period on the debt. Chapter 12 also allows most farmers to greatly reduce those debts that are not secured by some collateral.

What Happens If the Debtor Dies While Bankruptcy Is Still Pending

When a debtor dies while a bankruptcy case is still pending, what will happen depends in large part on the type of bankruptcy at issue.

In the case of a liquidation bankruptcy under Chapter 7, death of the debtor does not stop the liquidation. Instead, to the extent possible, the bankruptcy will be administered in the same manner as though the death had not occurred.

The effect of a debtor's death is more complex in a reorganization bankruptcy. In a reorganization, if the debtor dies while the case is still pending, the case either may be dismissed or may proceed, if further administration is possible and is in the best interest of the parties. Unless a representative of the debtor's estate can show that the debtor's income will likely continue after death—as might be the case if the farming operation were to continue under the direction of the debtor's spouse, joint operator, or heir—the case will likely be dismissed.

More Information on Bankruptcy
For additional information on Chapter 12 bankruptcy, FLAG has "An Introduction to Chapter 12 Bankruptcy: Restructuring the Family Farm" by Susan A. Schneider available on its Web site at http://www.flaginc.org/disaster/

Transferring Federal Farm Loan to Another Borrower During Life

Transfer and assumption is a process that enables FSA direct loan borrowers to transfer ownership of collateral securing an FSA loan to another party, with that party then also assuming the FSA loan obligations. The person being relieved of the loan is called the *transferor*, and the person taking on the loan is called the *transferee*.

Completing a transfer and assumption during life may be an important planning strategy for retiring farmers who wish to transfer a farm to an adult child or other person. If done correctly, a transfer and

assumption can release the original borrower from any liability under the loan and enable him or her to pass on a viable farming operation, with the next generation taking ownership of the collateral and continuing to make regular loan payments.[7]

The process for completing a transfer and assumption can be fairly complicated. Borrowers should work closely with FSA, the transferee, and any junior lienholders in carrying out the transfer and assumption. In addition, as with any arrangement that involves a discharge of debt or a transfer of title to property, farmers should consult a tax expert because these actions may have significant income tax and estate tax implications.

How Transfer and Assumptions Work

There are some general rules for transfer and assumption, and there are some rules that differ depending on *what kind of collateral* is being transferred and *to whom* the loan is being transferred.

FSA has slightly different rules for transfer and assumptions involving real estate (land) and those involving "chattel property" (such as crops, livestock, and equipment). If an account is secured by both real estate and chattels, the real estate rules apply.

The terms of any transfer and assumption also vary depending on whether the transfer is going to a person who is eligible or ineligible to assume the FSA loans. A person is eligible to assume the debt if he or she meets all of FSA's eligibility and loan purpose requirements for the type of loan being assumed. A person is ineligible if he or she does not meet those requirements.

Glossary of Terms

Assumption – An agreement by one party to take responsibility for an obligation previously owed by another.

Chattel Property – Personal possessions, not real estate. Includes things like tractors, grain, livestock, farm supplies, and the right to collect payment or receive money from another.

Real Property – Includes land and anything permanently erected on or attached to the land, such as a house or other building. Real property means the same thing as "real estate."

Transferee – The new person taking over the loan from the original borrower.

Loans Secured at Least in Part by Real Estate

For any transfer involving real estate security, an *eligible* transferee may assume the loan as long as his or her total indebtedness to FSA after the assumption does not exceed the maximum loan limit for the type of loan involved. The assumed loan will be on "program terms," which are generally more favorable, with the interest rate and repayment period from the original loan possibly being adjusted in accordance with current program specifications.

In some specific cases, however, loans will be assumed only on the same terms as in the original note. Situations where assumption must be on the same terms include when an immediate family member of an individual borrower wants to assume the debt *with* the existing borrower, and when an individual borrower's debt is assumed by an entity made up only of the borrower and his or her immediate family.[8]

An *ineligible* transferee can assume a loan only on "non-program" or "ineligible" terms. These terms, including interest rate and repayment requirements, are generally significantly less desirable than the terms for a program loan. An ineligible transferee will only be allowed to assume the loan if he or she has never been liable for any FSA farm loan that was reduced or terminated in a way that resulted in a loss to the federal government.

Loans Secured Only by Chattels

For transfers involving only chattel security, *eligible* transferees will generally assume the loan on the same terms as in the existing note.

Transfers to *ineligible* transferees may be approved only if it is in FSA's financial interest to approve the transfer rather than liquidate the collateral immediately. Also, the transferee must never have

been liable for any FSA farm loan that was reduced or terminated in a way that resulted in a loss to the federal government. If transfer to an ineligible transferee is approved, the interest rate will be set by regulation, and the maximum payback period of the assumed loan will be five years.

Amount of Loan That Must Be Assumed

If the collateral being transferred is worth at least as much as the debt, the debt is considered "fully secured," and the transferee must assume the entire debt.

If the collateral is worth less than the debt, the debt is "undersecured," and the transferee will assume only an amount of debt equal to the present market value of the collateral, less the value of any liens held by other creditors whose claims have higher priority than FSA's.

Release of Liability for Transferor

After the transfer and assumption, the original borrower may be released from personal liability if the total outstanding debt was assumed. However, if the debt was undersecured and the transferee only assumed a debt amount equaling the market value of the collateral, then FSA will seek to collect the remaining balance before releasing the original borrower. This means that borrowers with undersecured debts will need to address the difference between their total debt amount and the market value of their collateral before being released from liability.

Borrowers who were previously given any debt relief that resulted in a loss to the federal government may also be prevented from obtaining a release.

Special Situations

There are several other special situations addressed by the transfer and assumption rules. For example, partial transfers and transfers to multiple transferees may be approved in certain situations but are subject to additional rules and regulations. In addition, FSA's Emergency (EM) loans are subject to special requirements before any transfer and assumption.

Dealing With a Federal Farm Loan When Borrower Dies

These materials provide a brief summary of FSA's general practice when a farmer with an outstanding farm loan dies. Farmers may fear that, upon their death, FSA will take immediate steps to recover full payment of the entire loan balance from the estate, or that FSA will begin liquidating the deceased borrower's collateral. However, there is a process in place by which FSA will sometimes permit a surviving member of the farmer's family or another person to continue with the loan.

FSA's "deceased borrower" regulations are very complicated, and the outcome in individual situations may vary greatly depending on individual circumstances.[9] Heirs should work closely with FSA and, if a dispute arises, may need to consult an experienced attorney.

Life Insurance Policies

Some farmers purchase a life insurance policy and name the intended farm successor as the beneficiary, with the intent that the policy beneficiary will be able to use the insurance proceeds to pay off any remaining farm debts and/or to "purchase" the farm operation from other non-farming family members. Farmers should consult an expert to evaluate the financial, tax, and

When Borrower Was Jointly Liable With Another Person on the Loan

A person who was jointly liable on the loan with the borrower at the time of the borrower's death can usually continue with the loan without interruption. FSA need only ensure that this joint obligor can meet the obligations of the loan and maintain the collateral, and that liquidation is not necessary to protect the financial interests of FSA.

If a loan is continued with a joint obligor after a borrower dies, the rates, terms, and amount of the loan should remain unchanged.

When Another Party Who Was Not Jointly Liable Wants to Assume the Loan

A person who was not jointly liable for the borrower's debt may be able to assume the loan and take over the farming operation after the borrower dies. FSA analyzes these situations differently depending on whether the person continuing the farm will do so for the benefit of the deceased borrower's family members who were directly dependent on the borrower for support at time of death.

When the Loan Is Assumed for the Benefit of the Deceased Borrower's Dependents

If the person continuing the farm is doing so for the benefit of one or more of the deceased borrower's dependents, FSA may have more flexibility to approve continuation of the loan without regard to whether the transferee would otherwise be eligible for that type of loan. The regulation requires only that a person taking over in these circumstances have repayment ability, and that he or she has never had an FSA farm loan that resulted in a loss to the federal government.

However, it is not clear in practice the extent to which FSA will still require that these transferees meet other loan eligibility requirements in order to assume a loan on program terms. If problems arise, the deceased borrower's heirs should consult an attorney.

When the Loan Is Not Assumed for the Benefit of the Deceased Borrower's Dependents

When someone wants to assume a deceased borrower's loan and collateral, but not for the benefit of the deceased borrower's dependents, FSA will consider whether to approve a regular transfer and assumption, without any of the additional flexibility that the deceased borrower rules may provide. This means the new borrower's eligibility under current loan regulations will be considered and will govern the terms of any assumption.[10]

Amount of Loan That Must Be Assumed

In any case where a person who was not jointly liable with the borrower takes over the deceased borrower's loan, the amount of loan assumed will be the total outstanding debt if the debt is fully secured. If the debt is undersecured, the loan amount assumed will be equal to the market value of the collateral less any the value of any liens held by other creditors whose claims have higher priority than FSA's.

Release of Liability for the Deceased Borrower's Estate

If the loan is continued with another person after the borrower's death, the estate may be released from liability when the title to the collateral is successfully transferred to the transferee, and the full amount of the debt is assumed. In the case of an undersecured debt, a release will be granted only after FSA has sought to collect the remaining portion of the debt from the estate and determines that it has obtained all that can reasonably be collected.

When No One Continues With the Loan

When a survivor will not continue with the deceased borrower's loan and property, FSA may make arrangements to complete the year's operations or to otherwise protect or preserve the collateral. If no one applies to assume the loan, and the account is in monetary or non-monetary default, FSA will proceed with liquidation of the collateral. Notices will be sent to the executor, administrator, or other representative of the borrower's estate.

The deceased borrower's estate itself is not eligible for loan servicing.

Sometimes, a debt can be cancelled when a borrower dies.[11] However, this only occurs when there is no collateral, and FSA has either received all funds it was entitled to from the estate or has no reasonable prospect of additional recovery from the estate.◆

Endnotes

[1] Some states have statutory protections in place to preserve some assets or monetary allowances out of the estate for the personal needs of surviving relatives. Typically, these are designed to meet the immediate needs of a surviving spouse or minor children. Farmers should consult an attorney in their state to learn about the particular protections that may be available.

[2] 7 U.S.C. § 2001 (2005); 7 C.F.R. pt. 1951, subpart S (2005).

[3] 7 C.F.R. § 1962.17 (2005); see also 7 C.F.R. pt. 1962, subpart A, Exhibit E (2005).

[4] 7 C.F.R. pt. 1951, subpart S, Exhibit H (2005).

[5] 7 U.S.C. § 2000 (2005); 7 C.F.R. § 1951.911 (2005).

[6] 7 C.F.R. pt. 1956, subpart B (2005).

[7] The regulations governing transfers and assumptions are published at 7 C.F.R. § 1965.27 (2005) (real estate) and 7 C.F.R. § 1962.34 (2005) (chattel property).

[8] FSA has interpreted these "assumption on the same terms" provisions, found at 7 C.F.R. § 1965.27(b)(5) (2005), as requiring that the transferees still must meet traditional loan eligibility requirements before any assumption may occur. However, the regulations may arguably be interpreted to provide more flexibility as to these eligibility requirements. If individual problems arise, farmers should consult a knowledgeable attorney.

[9] These regulations can be found at 7 C.F.R. § 1962.46 (2005) and 7 C.F.R. § 1965.22 (2005).

[10] The regulations could arguably be interpreted to allow some flexibility as to the transferee's eligibility regardless of whether the deceased borrower had any dependents. See, e.g., 7 C.F.R. §§ 1962.46(g)(2), 1965.27 (b)(5)(ii) (2005).

[11] 7 C.F.R. § 1956.70(b)(1) (2005).

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