



March 19, 2021

Rural Development

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Acting Administrator

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TO: All RHS MFH National Office Directors
Rural Development

ATTN: Multi-Family Housing Directors
Rural Development

FROM: Chad Parker /s/ *Chad Parker*
Acting Administrator
Rural Housing Service

SUBJECT: Section 515 and Section 514 Multi-Family Housing Servicing Filing
Procedures for Financing Statements, Restrictive Use Agreements,
and Release of Mortgage

PURPOSE

The purpose of this Unnumbered Letter (UL) is to review the filing procedures for Financing Statement(s), applicable Restrictive Use Agreements, and Mortgage Releases for Borrowers with Rural Development (RD) Multi-Family Housing (MFH) Section 515 Rural Rental Housing and Section 514 Farm Labor Housing program loans. Section 515 and Section 514 Borrowers must file Financing Statements, including Uniform Commercial Code (UCC), Restrictive Use Agreements, and Release of Mortgages according to the regulations for these programs in 7 CFR 3560. The Financing Statement renewal filing fees are an allowable project expense, per §3560.303 Housing project budgets (b)(1)(vi)(G).

BACKGROUND

RD's MFH program provides decent, safe, and sanitary housing rental units for very-low, low, and moderate-income households in rural areas. To ensure the security of RD's interest in the collateral that is provided through the Section 515 or 514 loan mortgage, Agency regulations provide guidance regarding the initial and renewal filings of UCC Financing Statements throughout the life of the loan. The UCC Financing Statements must be renewed every five years, in accordance with the corresponding state and county directives. Along with the tracking of Financing Statements, there are documents covered in this UL, such as Restrictive Use Agreements and Mortgage Releases, that must be handled by the Servicing Official.

EXPIRATION DATE:
March 31, 2022

FILING INSTRUCTIONS:
Housing Programs

IMPLEMENTATION

Financing Statements

Through MFH program's loan making and loan servicing offices, Borrowers will be provided with guidance for financing statement filings. Filing is essential to ensure that all security documents are recorded, according to applicable state and county laws. *The UCC Financing Statement allows the Agency the first or parity lien on revenue from rent per 7 CFR 3560.61(b)(2)*. A valid UCC must be on file with the state in which the ownership entity is registered.

At loan closing, an initial UCC-1 Financing Statement is filed and is valid for an initial period of five years from the date of filing. Prior to the end of the initial five-year period, and each five year period thereafter, a continuation statement, or UCC-3, must be filed in order to renew the UCC-1. Failure to timely file the UCC-3 continuation statements will result in a new UCC-1 needing to be filed of record. It is the Borrower's responsibility to ensure timely filing. An RD Servicing Official will send a reminder to the Borrower six (6) months before the current UCC's expiration date. The reminder will allow the Borrower or Borrower's representative enough time to complete and file the UCC-3 continuation statement. The filing fee is an allowable project expense. The Borrower must provide an email copy of the filed document to the assigned RD Servicing Official. The RD Servicing Official will track this activity using MFIS Supervisory Activities and will enter the details in MFIS under the project details screen (Financing Statements). Failure to provide a copy will result in the borrower being in non-compliance with Agency requirements and servicing efforts will begin until rectified.

To determine how and where to file the UCC-1 and UCC-3 with the appropriate state, borrowers can search online with: "File [add State name here] Uniform Commercial Code" to find your state's UCC forms and filing information or at the county level, search online with: "File [insert county name] [state] land records office". The HUD Exchange can also be utilized, it provides links to each state's webpage with UCC filing information: (<https://www.hudexchange.info/programs/multifamily-housing/ucc/>).

Restrictive Use Agreements

Agency regulations may require the Borrower to file/record any Restrictive Use Agreements. This is typically done at loan closing, transfer, and incentive offers. RD provides the Borrower with the appropriate Restrictive Use Agreement and instructions on how to execute and file/record the Agreement. A Restrictive Use Agreement need only be filed once, unless the agreement is amended. The cost of filing the Restrictive Use Agreement is the responsibility of the Borrower. It is the Borrower's responsibility to provide executed copies of the Restrictive Use Agreement to RD, through their assigned MFH servicing official. ***Loan funds and/or incentives will not be available until recording has been completed and verified.*** Please ensure that the correspondence contains the property name, Borrower ID, and project number. The RD Servicing Official will update the MFIS details screen with the new Restrictive Use Expiration date.

A Restrictive Use Agreement may be required at the time of prepayment of the Agency loan. RD will provide the appropriate Restrictive Use Agreement to the borrower. If the property is not changing ownership at the time of prepayment, a copy of the executed and filed Restrictive Use Agreement should be provided to the Agency prior to providing the payoff. If ownership of the property is changing, the Restrictive Use Agreement should be recorded as part of the closing at a title company or with an attorney. A copy of the executed and filed Restrictive Use Agreement must be provided to the Agency. The cost of filing/recording the Restrictive Use Agreement is the responsibility of the Borrower. A property that has prepaid with restrictions must be monitored during the restriction period. The RD Servicing Official will update the non-Active Borrower in MFIS by adding the Supervisory Activity "Annual Prepayment Certification". A comment should be added to the activity to indicate the term of the restrictions.

Mortgage Release/Satisfaction of Lien

Upon Borrower request, the Agency will release security instruments, subject to applicable Restrictive Use Agreements, when full payment, or agreed amount if less than full payment, of the obligations to the Agency have been made per §3560.404(f). ***The Agency must receive, accept, and apply the funds to the outstanding amounts prior to releasing the security instruments.*** §3560.404(f)(2) indicates the recording costs for the release of the security instruments will be the responsibility of the borrower, except where state law requires the mortgagee to record or file the satisfaction. If state law requires the mortgagee to record the release, the Borrower may choose to incur this expense in order to expedite the process. Refer to RD Instruction 2024-A for PLCE costs when the Agency incurs the cost (Exhibit D, Paragraph III (G) Non-Contractual Expense.

RD Loan Specialists and Servicing Officials will continue to provide guidance to Borrowers of MFH properties to maintain compliance with 7 CFR 3560.

If you have any questions regarding the guidance in this UL, please contact Joanna Rogers, Policy & Budget Branch, MFH Asset Management Division.