

property when the applicant or entity held fee title to the property; or

(ii) A member of an entity who is or was personally liable for the FLP loan that possessed and occupied a separate dwelling on the security property;

(2) Must have earned gross farm income commensurate with:

(i) The size and location of the farm; and

(ii) The local agricultural conditions in at least 2 calendar years during the 6-year period immediately preceding the calendar year in which the applicant applied for homestead protection;

(3) Must have received 60 percent of gross income from farming in at least two of the 6 years immediately preceding the year in which the applicant applied for homestead protection;

(4) Must have lived in the home during the 6-year period immediately preceding the year in which the applicant applied for homestead protection. The applicant may have left the home for not more than 12 months if it was due to circumstances beyond their control;

(5) Must demonstrate sufficient income to make rental payments on the homestead property for the term of the lease, and maintain the property in good condition. The lessee will be responsible for any normal maintenance; and

(6) Must not be ineligible due to disqualification resulting from Federal crop insurance violation according to 7 CFR part 718.

**§ 766.153 Homestead Protection transferability.**

Homestead protection rights are not transferable or assignable, unless the eligible party dies or becomes legally incompetent, in which case the homestead protection rights may be transferred to the spouse only, upon the spouse's agreement to comply with the terms and conditions of the lease.

**§ 766.154 Homestead Protection leases.**

(a) *General.* (1) The Agency may approve a lease-purchase agreement on the appropriate Agency form subject to obtaining title to the property.

(2) If a third party obtains title to the property:

(i) The applicant and the property are no longer eligible for homestead protection;

(ii) The Agency will not implement any outstanding lease-purchase agreement.

(3) The borrower may request homestead protection for property subject to third party redemption rights. In such case, homestead protection will not begin until the Agency obtains title to the property.

(b) *Lease terms and conditions.* (1) The amount of rent will be based on equivalent rents charged for similar residential properties in the area in which the dwelling is located.

(2) All leases will include an option to purchase the homestead protection property as described in paragraph (c) of this section.

(3) The lease term will not be less than 3 years and will not exceed 5 years.

(4) The lessee must agree to make lease payments on time and maintain the property.

(5) The lessee must cooperate with Agency efforts to sell the remaining portion of the farm.

(c) *Lease-purchase options.* (1) The lessee may exercise in writing the purchase option and complete the homestead protection purchase at any time prior to the expiration of the lease provided all lease payments are current.

(2) The purchase price is the market value of the property when the option is exercised as determined by a current appraisal obtained by the Agency.

(3) The lessee may purchase homestead protection property with cash or other credit source.

(4) The lessee may receive Agency Non-program financing provided:

(i) The lessee has not received previous debt forgiveness;

(ii) The Agency has funds available to finance the purchase of homestead protection property; and

(iii) The lessee demonstrates an ability to repay such an FLP loan.

(d) *Lease terminations.* The Agency may terminate the lease if the lessee does not cure any lease defaults within 30 days of Agency notification.

(e) *Appraisal of homestead protection property.* The Agency will use an appraisal obtained within six months