to record such a deed, for failing to recognize such recordation as imparting notice or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 97–35, title III, § 369E, Aug. 13, 1981, 95 Stat. 430.)

§ 3714. Record of foreclosure and sale

(a) To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser or prepare an affidavit or addendum to the deed stating—

(1) that the mortgage was held by the Secretary;

(2) the particulars of the foreclosure commissioner's service of notice of default and foreclosure sale in accordance with sections 3708 and 3710 of this title;

(3) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale;

(4) a correct statement of the costs of foreclosure, calculated in accordance with section 3711 of this title; and

(5) the name of the successful bidder and the amount of the successful bid.

(b) The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments.

(Pub. L. 97–35, title III, § 369F, Aug. 13, 1981, 95 Stat. 430.)

§ 3715. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 97–35, title III, § 369G, Aug. 13, 1981, 95 Stat. 431.)

§ 3716. Separability

If any clause, sentence, paragraph or part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof and of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 97–35, title III, § 369H, Aug. 13, 1981, 95 Stat. 431.)

§ 3717. Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 97–35, title III, § 369I, Aug. 13, 1981, 95 Stat. 431.)

CHAPTER 38A—SINGLE FAMILY MORTGAGE FORECLOSURE

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§ 3751. Findings and purpose

(a) Findings

The Congress finds that—

(1) the disparate State laws under which mortgages are foreclosed on behalf of the Secretary covering 1- to 4-family residential properties—

(A) burden certain programs administered by the Secretary;

(B) increase the costs of collecting obligations; and

(C) generally are a detriment to the community in which the properties are located;

(2) the long periods required to complete the foreclosure of such mortgages under certain State laws—

(A) lead to deterioration in the condition of the properties involved;

(B) necessitate substantial Federal holding expenditures;

(C) increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and

(D) adversely affect the neighborhoods in which the properties are located;

(3) these conditions seriously impair the ability of the Secretary to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authority;

(4) the availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Secretary will tend to ameliorate these conditions; and

(5) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts if they contribute to overcrowded calendars.

(b) Purpose

The purpose of this chapter is to create a uniform Federal foreclosure remedy for single family mortgages that—

(1) are held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(2) secure loans obligated by the Secretary under section 1452b[1] of title 42.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the Act are classified generally to subchapters I (§ 1702 et seq.) and II (§ 1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 1452b of title 42, referred to in subsec. (b)(2), was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section is based on section 802 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

EFFECTIVE DATE

Title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part that title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which is classified to this chapter, is incorporated into Pub. L. 103–327 and deemed enacted into law upon enactment of Pub. L. 103–327, which was approved Sept. 28, 1994.

SHORT TITLE

Section 801 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by title II of Pub. L. 103–327, Sept. 28, 1994, 108 Stat. 2316, provided in part, that: ''This title [enacting this chapter] may be cited as the 'Single Family Mortgage Foreclosure Act of 1994'.''

§ 3752. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Bona fide purchaser

The term ''bona fide purchaser'' means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

(2) County

The term ''county'' has the same meaning as in section 2 of title 1.

(3) Mortgage

The term ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real, personal or mixed), or any interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

(4) Mortgage agreement

The term ''mortgage agreement'' means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

(5) Mortgagor

The term ''mortgagor'' means the obligor, grantor, or trustee named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

(6) Owner

The term ''owner'' means any person who has an ownership interest in property and includes heirs, devises, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

(7) Person

The term ''person'' includes any individual, group of individuals, association, partnership, corporation, or organization.

(8) Record; recorded

The terms ''record'' and ''recorded'' include ''register'' and ''registered'' in the instance of registered land.

(9) Security property

The term ''security property'' means the property (real, personal or mixed) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), together with fixtures and other interests subject to the lien of the mortgage under applicable State law.

(10) Single family mortgage

The term ''single family mortgage'' means a mortgage that covers property on which there is located a 1- to 4-family residence, and that—

(A) is held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(B) secures a loan obligated by the Secretary under section 1452b of title 42, as it existed before the repeal of that section by section 12839 of title 42 (except that a mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this chapter).

(11) State

The term ''State'' means—

(A) the several States;
(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico;
(D) the United States Virgin Islands;
(E) Guam;
(F) American Samoa;
(G) the Northern Mariana Islands;
(H) the Trust Territory of the Pacific Islands; and
(I) Indian tribes, as defined by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (10)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended.

[1] See References in Text note below.

Titles I and II of the Act are classified generally to subchapters I (§ 1702 et seq.) and II (§ 1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section is based on section 803 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3753. Applicability

Single family mortgages encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 804 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3754. Designation of foreclosure commissioner

(a) In general

The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale

A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications

The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure

(1) Written designation

The Secretary may designate a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners

The Secretary may, with or without cause, designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner.

(3) Number

More than 1 foreclosure commissioner may be designated at any time.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 805 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3755. Prerequisites to foreclosure

(a) In general

(1) Upon breach of covenant or condition

The Secretary is authorized to foreclose a mortgage under this chapter upon the breach of a covenant or condition in the mortgage agreement.

(2) No other pending proceedings

(A) Prior to commencement

No foreclosure may be commenced under this chapter unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage (other than under this chapter), has been withdrawn, dismissed, or otherwise terminated.

(B) After commencement

No separately instituted foreclosure proceeding on a mortgage which is the subject of a foreclosure proceeding under this chapter shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter.

(b) Other rights unaffected

Nothing in this chapter shall preclude the Secretary from—

(1) enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment; or

(2) foreclosing under this chapter if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement, including the appointment of a receiver, mortgagee-in-possession status, or relief under an assignment of rents.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 806 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3756. Commencement of foreclosure

(a) Request to foreclosure commissioner

If the Secretary, as holder of a single family mortgage, determines that the prerequisites to foreclosure set forth in section 3755 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of a single family mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by com-

mencing service of a notice of default and foreclosure sale in accordance with sections 3757 and 3758 of this title.

(b) Designation of substitute foreclosure commissioner

After commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time before the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with section 3760(c) of this title.

(c) Written notice

Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation described in section 3754 of this title shall be served—

(1) by mail, as provided in section 3758 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply); or

(2) in any other manner which, in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 807 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3757. Notice of default and foreclosure sale

The notice of default and foreclosure sale to be served in accordance with this chapter shall set forth—

(1) the name and address of the foreclosure commissioner;

(2) the date on which the notice is issued;

(3) the names of—

(A) the Secretary;

(B) the original mortgagee (if other than the Secretary); and

(C) the original mortgagor;

(4) the street address or a description of the location of the security property, and a description of the security property, sufficient to identify the property to be sold;

(5) the date of the mortgage, the office in which the mortgage is recorded, and the liber number and folio or other appropriate description of the location of recordation of the mortgage;

(6) identification of the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;

(7) the date, time, and location of the foreclosure sale;

(8) a statement that the foreclosure is being conducted pursuant to this chapter;

(9) a description of the types of costs, if any, to be paid by the purchaser upon transfer of title;

(10) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary) and the time and method of payment of the balance of the foreclosure purchase price; and

(11) any other appropriate terms of sale or information, as the Secretary may determine.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 808 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3758. Service of notice of foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale described in section 3757 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(1) Timing

Not less than 21 days before the date of the foreclosure sale, the notice of default and foreclosure sale shall be filed in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located or, if none, in the manner authorized by section 3201 of title 28.

(2) Notice by mail

(A) In general

The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following:

(i) Current owner

The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(ii) Mortgagors

All mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(iii) Dwelling units

All dwelling units in the security property (whether or not the notice describes a sale adjourned).

(iv) Other lienholders

All persons holding liens of record upon the security property, as the record ex-

isted 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(B) Timing

(i) Notice under clauses (i) and (ii)

Notice under clauses (i) and (ii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to the current owner and mortgagor at the last known address of the current owner and mortgagor, or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such current owner and mortgagor.

(ii) Notice under clause (iii)

Notice under clause (iii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or the security property has more than 1 dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iii) Notice under clause (iv)

Notice under clause (iv) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to each such lienholder's address of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(C) Effectiveness of notice

Notice by mail pursuant to this section or section 3756(c) of this title shall be deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned.

(3) Publication

(A) In general

A copy of the notice of default and foreclosure sale shall be published once a week during 3 successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers having circulation conducive to achieving notice of foreclosure by publication. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located shall be considered a newspaper having general circulation for the purposes of this paragraph.

(B) Exception

If there is no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted not less than 21 days before the date of the foreclosure sale—

(i) at the courthouse of any county or counties in which the security property is located; and

(ii) at the place where the sale is to be held.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 809 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3759. Presale reinstatement

(a) Withdrawal and cancellation

(1) In general

Except as provided in sections 3756(b) and 3760(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(A) the Secretary directs the foreclosure commissioner to do so before or at the time of the sale;

(B) the foreclosure commissioner finds, upon application of the mortgagor not less than 3 days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(C)(i) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated;

(ii) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and

(iii) there is tendered to the foreclosure commissioner before public auction is completed—

(I) all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated);

(II) all amounts of expenditures secured by the mortgage; and

(III) all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3761 of this title.

(2) Discretionary noncancellation

The Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (1)(C) if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Opportunity of Secretary to dispute withdrawal

Before withdrawing the security property from foreclosure under subparagraph (B) or (C) of subsection (a)(1) of this section, the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

(c) Effect of cancellation

(1) Mortgage unaffected

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(2) Commencement of new foreclosure sale

Cancellation of a foreclosure sale under this chapter shall have no effect on the commencement of a subsequent foreclosure proceeding under this chapter.

(d) Notice of cancellation

The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the notice of default and foreclosure sale in section 3758 of this title.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 810 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3760. Conduct of sale; adjournment

(a) In general

(1) Manner and time

A foreclosure sale pursuant to this chapter shall be held at public auction and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time.

(2) Location

The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale and such location shall be at a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any 1 of the counties in which any part of the security property is situated.

(3) Sale of multiple properties

The foreclosure commissioner may designate the order in which multiple security properties are sold.

(b) Duties of foreclosure commissioner

(1) Conduct of sale

(A) In general

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary.

(B) Written bids

Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the foreclosure commissioner at the sale.

(C) Auctioneer

The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3761(5) of this title.

(2) Eligible participants

(A) In general

The Secretary, and any other person who has submitted a written one-price bid, may bid at the foreclosure sale.

(B) Prohibited participants

The foreclosure commissioner or any relative, related business entity, or employee of the foreclosure commissioner or a related business entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf.

(c) Adjournment or cancellation of sale

(1) General authority

The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's discretion, that—

(A) circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(B) additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 3759 of this title.

(2) Adjournment to same or later day

The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting the new time and place of the foreclosure sale, or may adjourn the foreclosure sale for not less than 9 and not more than 31 days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite the fact that the foreclosure sale has been adjourned to a specified date, as well as any other information the foreclosure commissioner deems appropriate. Such notice shall be served by publication and mailing in accordance with section 3758 of this title, except that publication may be made on any of 3 separate days before the revised date of foreclosure sale, and mailing may be made at any time not less than 7 days before the date to which the foreclosure sale has been adjourned.

(d) Cash deposits

The foreclosure commissioner may require a bidder to make a cash deposit in an amount or percentage set by the foreclosure commissioner and stated in the notice of foreclosure sale be-

fore the bid is accepted. A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure.

(e) Presumption of validity of sale

Any foreclosure sale held in accordance with this chapter shall be conclusively presumed to have been conducted in a legal, fair, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 811 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3761. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds before satisfaction of any other claim to such sale proceeds:

(1) Advertising and postage

Necessary advertising costs and postage incurred in giving notice pursuant to sections 3758 and 3760 of this title.

(2) Mileage

Mileage (determined by the most reasonable road distance) for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale, as provided in section 1821 of title 28.

(3) Title and lien search

Reasonable and necessary costs incurred in connection with any search of title and lien records.

(4) Recordation fees

Costs incurred to record documents.

(5) Commission

A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure, to the extent such a commission is authorized by the Secretary.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 812 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3762. Disposition of sale proceeds

(a) Priority payments

Money realized from a foreclosure sale shall be made available for obligation and expenditure in the following order:

(1) Costs of foreclosure

To cover the costs of the foreclosure proceeding described in section 3761 of this title.

(2) Tax liens

To pay valid tax liens or assessments if required by the notice of default and foreclosure sale.

(3) Prior liens

To pay any liens recorded before the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale.

(4) Service charges and advances

To pay service charges and advances for taxes, assessments, and property insurance premiums.

(5) Interest

To pay any outstanding interest.

(6) Principal

To pay the principal outstanding balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement).

(7) Late charges or fees

To pay any late charges or fees.

(b) Other payments

(1) Other lienholders and the mortgagor

Any surplus of proceeds from a foreclosure sale, after payment of the items described in subsection (a) of this section shall be paid in the following order:

(A) First, to holders of liens recorded after the mortgage in the order of priority under Federal law or the law of the State in which the security property is located.

(B) Second, to the appropriate mortgagor.

(2) Disputed claims

If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs incurred in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 813 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3763. Transfer of title and possession

(a) Delivery of deeds

The foreclosure commissioner shall, upon delivery of a deed or deeds to the purchaser or purchasers (which shall be without warranty or cov-

enants to the purchaser or purchasers) obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner shall be a conveyance of the property, and constitute passage of title to the mortgaged property, and no judicial proceedings shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(b) Right of possession

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title under subsection (a) of this section to the mortgaged property, subject to any interest or interests not barred under section 3765 of this title. Any person remaining in possession of the mortgaged property after the passage of title shall be deemed a tenant at sufferance subject to eviction under local law.

(c) Death of purchaser

If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner shall execute and deliver the deed to a representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate shall have the same effect as if accomplished during the lifetime of the purchaser.

(d) Bona fide purchaser

The purchaser of property under this chapter shall be presumed to be a bona fide purchaser.

(e) No right of redemption

(1) In general

There shall be no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to this chapter.

(2) Certain provisions

Section 1710(*l*) of this title and section 1452c of title 42 shall not apply to mortgages foreclosed under this chapter.

(f) Taxes

When a mortgage foreclosed pursuant to this chapter is conveyed to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed (including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property). Failure to collect or pay a tax of the type and under the circumstances stated in the preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 814 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3764. Record of foreclosure and sale

(a) Statements included

To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser, or prepare as an affidavit or addendum to the deed, a statement setting forth—

(1) the date, time, and place of the foreclosure sale;

(2) that the mortgage was held by the Secretary, the date of the mortgage, the office in which the mortgage was recorded, and the liber number and folio or other appropriate description of the recordation of the mortgage;

(3) the particulars of the foreclosure commissioner's service of the notice of default and foreclosure sale in accordance with sections 3758 and 3760 of this title;

(4) the date and place of filing the notice of default and foreclosure sale;

(5) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale; and

(6) the sale amount.

(b) Effect of statements

The items set forth in subsection (a) of this section shall—

(1) be prima facie evidence of the truth of such facts in any Federal or State court; and

(2) evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice.

Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

(c) Recordation of instruments

The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit (if prepared) and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments, and without regard to the compliance of those instruments with any other local filing requirements.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 815 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3765. Effect of sale

A sale, made and conducted as prescribed in this chapter to a bona fide purchaser, shall bar all claims upon, or with respect to, the property sold, for each of the following persons:

(1) Notice recipients

Any person to whom the notice of default and foreclosure sale was mailed as provided in this chapter, and the heir, devisee, executor,

administrator, successor, or assignee claiming under any such person.

(2) Subordinate claimants with knowledge

Any person claiming any interest in the property subordinate to that of the mortgage, if such person had actual knowledge of the foreclosure sale.

(3) Nonrecorded claimants

Any person claiming any interest in the property, whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as required by section 3758(3) of this title, and the executor, administrator, or assignee of such a person.

(4) Other persons

Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 816 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3766. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days, including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 817 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3767. Severability

If any part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof, and shall be confined in its operation to the part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 818 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

§ 3768. Deficiency judgment

(a) In general

(1) Referral to Attorney General

If after deducting the payments provided for in section 3762 of this title, the price at which the security property is sold at a foreclosure sale is less than the unpaid balance of the debt secured by the security property, resulting in a deficiency, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any or all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

(2) Other recoveries

In any action instituted pursuant to this section the United States may recover—

(A) any amount authorized by section 3011 of title 28; and

(B) the costs of the action.

(b) Limitation

Any action commenced to recover a deficiency under this section must be brought not later than 6 years after the date of the last sale of the security property.

(Pub. L. 103–327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 819 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103–327.

CHAPTER 39—ALTERNATIVE MORTGAGE TRANSACTIONS

Sec.
3801. Findings and purpose.
3802. Definitions.
3803. Alternative mortgage authority.
3804. Applicability of preemption provisions.
3805. Applicability of consumer protection provisions.
3806. Adjustable rate mortgage caps.

§ 3801. Findings and purpose

(a) The Congress hereby finds that—

(1) increasingly volatile and dynamic changes in interest rates have seriously impared[1] the ability of housing creditors to provide consumers with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings;

(2) alternative mortgage transactions are essential to the provision of an adequate supply of credit secured by residential property necessary to meet the demand expected during the 1980's; and

(3) the Comptroller of the Currency, the National Credit Union Administration, and the Director of the Office of Thrift Supervision have recognized the importance of alternative mortgage transactions and have adopted regulations authorizing federally chartered depository institutions to engage in alternative mortgage financing.

[1] So in original. Probably should be ''impaired''.