merly § 463(c), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98–479, title I, § 104(d)(1), (e)(1), Oct. 17, 1984, 98 Stat. 2226, established conditions on financial assistance for residential and commercial energy conserving improvements.

Section 3613, Pub. L. 96–294, title V, § 515, June 30, 1980, 94 Stat. 732; Pub. L. 100–242, title V, § 570(e), Feb. 5, 1988, 101 Stat. 1950; Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433, established conditions on financial assistance for solar energy systems.

Section 3614, Pub. L. 96–294, title V, § 516, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for residential and commercial energy conserving improvements.

Section 3615, Pub. L. 96–294, title V, § 517, June 30, 1980, 94 Stat. 734, provided limitations on provision of financial assistance for solar energy systems.

Section 3616, Pub. L. 96–294, title V, § 518, June 30, 1980, 94 Stat. 735, authorized Bank to promote program established by this chapter.

Section 3617, Pub. L. 96–294, title V, § 519, June 30, 1980, 94 Stat. 736, provided for submission of reports to Congress.

Section 3618, Pub. L. 96–294, title V, § 520, June 30, 1980, 94 Stat. 736; Pub. L. 98–181, title IV, § 463(e), Nov. 30, 1983, 97 Stat. 1234; Pub. L. 98–479, title I, § 104(d)(2)(A), Oct. 17, 1984, 98 Stat. 2226, provided for promulgation of rules and regulations to implement this chapter.

Section 3619, Pub. L. 96–294, title V, § 521, June 30, 1980, 94 Stat. 737, established penalties relating to disclosure of facts or statements required by this chapter.

Section 3620, Pub. L. 96–294, title V, § 522, June 30, 1980, 94 Stat. 737; Pub. L. 98–181, title IV, § 463(f)(2), Nov. 30, 1983, 97 Stat. 1235, authorized appropriations for residential and commercial energy conserving improvements and solar energy systems.

SHORT TITLE

Pub. L. 96–294, title V, § 501, June 30, 1980, 94 Stat. 719, provided that: ''This title [enacting this chapter and sections 6347, 8235 to 8235i, and 8281 to 8286b of Title 42, The Public Health and Welfare, amending sections 1451, 1454, 1717, 1723g, and 1723h of this title and sections 6862 to 6872, 8211, 8213, 8214, 8216, 8217, and 8221 of Title 42, repealing section 1723f of this title, and enacting provisions set out as notes under this section and sections 8211 and 8235 of Title 42] may be cited as the 'Solar Energy and Energy Conservation Act of 1980'.''

Pub. L. 96–294, title V, § 502, June 30, 1980, 94 Stat. 719, provided that subtitle A (§§ 502–534) of title V of Pub. L. 96–294 was to be cited as the ''Solar Energy and Energy Conservation Bank Act'', prior to repeal by Pub. L. 102–550, title IX, § 912(i)(1), Oct. 28, 1992, 106 Stat. 3876.

CHAPTER 38—MULTIFAMILY MORTGAGE FORECLOSURE

Sec.
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§ 3701. Findings and purpose

(a) The Congress finds that—

(1) disparate State laws under which the Secretary of Housing and Urban Development forecloses multifamily mortgages burden the programs administered by the Secretary pursuant to these authorities, and cause detriment to the residents of the affected projects and the community generally;

(2) long periods to complete the foreclosure of these mortgages under certain State laws lead to deterioration in the condition of the properties involved; necessitate substantial Federal management and holding expenditures; increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and adversely affect the residents of the projects and the neighborhoods in which the properties are located;

(3) these conditions seriously impair the Secretary's ability to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authorities, as well as the national housing goal of ''a decent home and a suitable living environment for every American family'';

(4) application of State redemption periods to these mortgages following their foreclosure would impair the salability of the properties involved and discourage their rehabilitation and improvement, thereby compounding the problems referred to in clause (3);

(5) the availability of a uniform and more expeditious procedure for the foreclosure of these mortgages by the Secretary and continuation of the practice of not applying post-sale redemption periods to such mortgages will tend to ameliorate these conditions; and

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

(b) The purpose of this chapter is to create a uniform Federal foreclosure remedy for multifamily mortgages.

(Pub. L. 97–35, title III, § 362, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, § 517(a), Oct. 28, 1992, 106 Stat. 3791.)

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–550, § 517(a)(1), substituted ''multifamily mortgages'' for ''real estate mortgages which the Secretary holds pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964 covering multiunit residential and nonresidential properties''.

Subsec. (b). Pub. L. 102–550, § 517(a)(2), substituted ''multifamily mortgages'' for ''multiunit residential and nonresidential mortgages held by the Secretary of Housing and Urban Development pursuant to title II of the National Housing Act or section 312 of the Housing Act of 1964''.

EFFECTIVE DATE

Section 371 of subtitle A of title III of Pub. L. 97–35 provided that:

''(a) Except as otherwise provided in this subtitle, the provisions of this subtitle [for classification of subtitle A (§ 300–371) of title III of Pub. L. 97–35, see Tables] shall take effect on October 1, 1981.

''(b) The amendments made by sections 324, 325, and 326(a) [amending section 1437f of Title 42, The Public Health and Welfare] shall apply only with respect to contracts entered into on and after October 1, 1981.''

SHORT TITLE

Section 361 of part 6 of subtitle A of title III of Pub. L. 97–35 provided that: ''This part [enacting this chapter] may be cited as the 'Multifamily Mortgage Foreclosure Act of 1981'.''

§ 3702. Definitions

As used in this chapter—

(1) ''mortgage'' means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in 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;

(2) ''multifamily mortgage'' means a mortgage held by the Secretary pursuant to—

(A) section 608 or 801, or title II or X, of the National Housing Act [12 U.S.C. 1743, 1748, 1707 et seq., 1749aa et seq.];

(B) section 312 of the Housing Act of 1964 [42 U.S.C. 1452b], as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act;

(C) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act;

(D) section 202 of the Housing Act of 1959 [12 U.S.C. 1701q], as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act; and

(E) section 811 of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 8013].

(3) ''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 (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing;

(4) ''mortgagor'' means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt;

(5) ''person'' includes any individual, group of individuals, association, partnership, corporation, or organization;

(6) ''record'' and ''recorded'' include ''register'' and ''registered'' in the instance of registered land;

(7) ''security property'' means the property, real, personal or mixed, or an interest in property, including leaseholds, life estate, 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;

(8) ''State'' means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary;

(9) ''county'' means county as defined in section 2 of title 1; and

(10) ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 97–35, title III, § 363, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, § 517(b), Oct. 28, 1992, 106 Stat. 3792.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of this title. Title X of the Act, which was classified principally to subchapter IX–A (§ 1749aa et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–235, title I, § 133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 312 of the Housing Act of 1964, referred to in par. (2)(B), is section 312 of Pub. L. 88–560, which was classified to section 1452b of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 101–625, title II, § 289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in par. (2)(C), (D), is section 801 of Pub. L. 101–625.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 amended par. (2) generally. Prior to amendment, par. (2) read as follows: '' 'multifamily mortgage' means a mortgage held by the Secretary pursuant to title II of the National Housing Act or section 312 of the House Act of 1964 covering any property, except a property on which there is located a one- to four-family residence;''.

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.

§ 3703. Applicability

Multifamily mortgages held by the Secretary 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. If the Secretary forecloses on any such mortgage pursuant to such other foreclosure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(Pub. L. 97–35, title III, § 364, Aug. 13, 1981, 95 Stat. 423; Pub. L. 98–181, title IV, § 471, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Pub. L. 98–181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§ 3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. 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 the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name, except that where such person is designated in his or her capacity as an official or employee of the government of the State or subdivision thereof in which the security property is located, such person may be designated by his or her unique title or position instead of by name. The Secretary shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to the preceding two sentences, the Secretary shall be fully subrogated to the rights satisfied by such payment.

(Pub. L. 97–35, title III, § 365, Aug. 13, 1981, 95 Stat. 423.)

§ 3705. Prerequisites to foreclosure

Foreclosure by the Secretary under this chapter of a multifamily mortgage may be commenced, as provided in section 3707 of this title, upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage, except that no such foreclosure may be commenced unless any previously pending proceeding, judicial or nonjudicial, separately instituted by the Secretary to foreclose the mortgage other than under this chapter has been withdrawn, dismissed, or otherwise terminated. No such separately instituted foreclosure proceeding on the mortgage shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter. Nothing in this chapter shall preclude the Secretary from enforcing any right, other than foreclosure, under applicable State law, including any right to obtain a monetary judgment. Nothing in this chapter shall preclude the Secretary from foreclosing under this chapter where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law or under the mortgage agreement, including, but not limited to, the appointment of a receiver, mortgagee-in-possession status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42.

(Pub. L. 97–35, title III, § 366, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102–550, title V, § 517(c), Oct. 28, 1992, 106 Stat. 3792.)

AMENDMENTS

1992—Pub. L. 102–550 substituted ''status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42'' for ''status or relief under an assignment of rents'' in last sentence.

§ 3706. Notice of default and foreclosure sale; condition and term of sale

(a) The notice of default and foreclosure sale to be served in accordance with this chapter shall be subscribed with the name and address of the foreclosure commissioner and the date on which subscribed, and shall set forth the following information:

(1) the names of the Secretary, the original mortgagee and the original mortgagor;

(2) the street address or a description of the location of the security property, and a description of the security property, or so much thereof as is to be offered for sale, sufficient to identify the property to be sold;

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

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

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

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

(7) the types of costs, if any, to be paid by the purchaser upon transfer of title; and

(8) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary), the time and method of payment of the balance of the foreclosure purchase price and other appropriate terms of sale.

(b)(1) Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or

any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.

(2)(A) In any case where the majority of the residential units in a property subject to such a sale are occupied by residential tenants at the time of the sale, the Secretary shall require, as a condition and term of sale, any purchaser (other than the Secretary) to operate the property in accordance with such terms, as appropriate, of the programs referred to in paragraph (1).

(B) In any case where the Secretary is the purchaser of a multifamily project, the Secretary shall manage and dispose of such project in accordance with the provisions of section 203 of the Housing and Community Development Amendments of 1978 [12 U.S.C. 1701z–11].

(Pub. L. 97–35, title III, § 367, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102–550, title V, § 517(d), Oct. 28, 1992, 106 Stat. 3792.)

AMENDMENTS

1992—Subsec. (b)(1). Pub. L. 102–550 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2)(A), the Secretary may require, as a condition and term of sale, that the purchaser at a foreclosure sale under this chapter agree to continue to operate the security property in accordance with the terms, as appropriate, of the loan program under section 312 of the Housing Act of 1964, the program under which insurance under title II of the National Housing Act was originally provided with respect to such property, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale.''

§ 3707. Commencement of foreclosure; powers and duties of foreclosure commissioner or substitute

(a) If the Secretary as holder of a multifamily mortgage determines that the prerequisites to foreclosure set forth in section 3705 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner shall commence foreclosure of the mortgage, by commencing service of a notice of default and foreclosure sale in accordance with section 3708 of this title.

(b) Subsequent to commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time up to forty-eight hours prior to the time of foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in his or her sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. In the event that the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in the manner provided in section 3710(c) of this title. Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation referred to in section 3704 of this title shall be served upon the persons set forth in section 3708(1) of this title (1) by mail as provided in such section 3708 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply to notice by mail pursuant to this subsection), or (2) in any other manner, which in the substitute commissioner's sole discretion, is conducive to achieving timely notice of such substitution. In the event a substitute foreclosure commissioner is designated less than forty-eight hours prior to the time of the foreclosure sale, the pending foreclosure shall be terminated and a new foreclosure shall be commenced by commencing service of a new notice of default and foreclosure sale.

(Pub. L. 97–35, title III, § 368, Aug. 13, 1981, 95 Stat. 425.)

§ 3708. Service of notice of default and foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale provided for in section 3706 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) The notice of default and foreclosure sale, together with the designation required by section 3704 of this title, shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following persons:

(A) the current security property owner of record, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter;

(B) the original mortgagor and all subsequent mortgagors of record or other persons who appear of record or in the mortgage agreement to be liable for part or all of the mortgage debt, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter, except any such mortgagors or persons who have been released; and

(C) all persons holding liens of record upon the security property, as the record exists forty-five days prior to the date originally set for foreclosure sale, whether or not the notice describes a sale adjourned as provided in this chapter.

Notice under clauses (A) and (B) of this paragraph shall be mailed at least twenty-one days prior to the date of foreclosure sale, and shall be mailed to the owner or mortgagor at the address stated in the mortgage agreement, 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 owner or mortgagor. Notice under clause (C) of this paragraph shall be mailed at least ten days prior to the date of foreclosure sale, and shall be mailed to each such lienholder's address as stated of record or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder. Notice by mail pursuant to this subsection or section 3707(b) 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 letter is returned.

(2) A copy of the notice of default and foreclosure sale shall be published, as provided herein, once a week during three successive calendar weeks, and the date of last publication shall be not less than four nor more than twelve days prior to the sale date. The information included in the notice of default and foreclosure sale pursuant to section 3706(a)(4) of this title may be omitted, in the foreclosure commissioner's discretion, from the published notice. 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, if any is available, having circulation conducive to achieving notice of foreclosure by publication. Should there be 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 in at least three public places in each such county at least twenty-one days prior to the date of sale.

(3) A copy of the notice of default and foreclosure sale shall be posted in a prominent place at or on the real property to be sold at least seven days prior to the foreclosure sale, and entry upon the premises for this purpose shall be privileged as against all persons. If the property consists of two or more noncontiguous parcels of land, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such parcel. If the security property consists of two or more separate buildings, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such building. Posting at or on the premises shall not be required where the foreclosure commissioner, in the commissioner's sole discretion, finds that the act of posting will likely cause a breach of the peace or that posting may result in an increased risk of vandalism or damage to the property.

(Pub. L. 97–35, title III, § 369, Aug. 13, 1981, 95 Stat. 426.)

§ 3709. Presale reinstatement

(a) Grounds

Except as provided in sections 3707(b) and 3710(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(1) the Secretary so directs the commissioner prior to or at the time of sale;

(2) the commissioner finds, upon application of the mortgagor at least three days prior to the date of 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

(3)(A) 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; (B) 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 (C) there is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated), all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3711 of this title, except that the Secretary shall have discretion to refuse to cancel a foreclosure pursuant to this paragraph (3) 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) Views of Secretary

Prior to withdrawing the security property from foreclosure in the circumstances described in subsection (a)(2) or (a)(3) 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) Mortgage subsequent to reinstatement

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.

(d) Subsequent foreclosures

If the foreclosure commissioner cancels a foreclosure sale under this chapter a new foreclosure may be subsequently commenced as provided in this chapter.

(Pub. L. 97–35, title III, § 369A, Aug. 13, 1981, 95 Stat. 427.)

§ 3710. Foreclosure sale

(a) Time of sale; public auction; location

The date of foreclosure sale set forth in the notice of default and foreclosure sale shall not be prior to thirty days after the due date of the earliest installment wholly unpaid or the earliest occurrence of any uncured nonmonetary default upon which foreclosure is based. Foreclosure sale pursuant to this chapter shall be 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 on a day other than Sunday or a public holiday as defined by section 6103(a) of title 5 or State law. The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale, which shall be a location where foreclosure real estate auctions are customarily held in the county or one of the 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 one of the counties in which any part of the security property is situated.

(b) Conduct of sale

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. The foreclosure commissioner shall attend the foreclosure sale in person, or, if there are two or more commissioners, at least one shall attend the foreclosure sale. In the event that no foreclosure commissioner is a natural person, the foreclosure commissioner shall cause its duly authorized employee to attend the foreclosure sale to act on its behalf. Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the commissioner at the sale. The Secretary and any other person may bid at the foreclosure sale, including the Secretary or any other person who has submitted a written one-price bid, except that the foreclosure commissioner or any relative, related business entity or employee of such commissioner or entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale. 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 3711(5) of this title.

(c) Adjournment or cancellation

The foreclosure commissioner shall have discretion, prior to or at the time of sale, to adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's sole discretion, that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary or that additional time is necessary to determine whether the security property should be withdrawn from foreclosure as provided in section 3709 of this title. The foreclosure commissioner may adjourn a sale to a later hour the same day without the giving of further notice, or may adjourn the foreclosure sale for not less than nine nor more than twenty-four days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite that the foreclosure sale has been adjourned to a specified date and to include any corrections the foreclosure commissioner deems appropriate. Such notice shall be served by publication, mailing and posting in accordance with section 3708 of this title, except that publication may be made on any of three separate days prior to the revised date of foreclosure sale, and mailing may be made at any time at least seven days prior to the date to which the foreclosure sale has been adjourned.

(Pub. L. 97–35, title III, § 369B, Aug. 13, 1981, 95 Stat. 428.)

§ 3711. Foreclosure costs

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

(1) necessary advertising costs and postage incurred in giving notice pursuant to sections 3708 and 3710 of this title;

(2) mileage for posting notices and for the foreclosure commissioner's attendance at the sale at the rate provided in section 1921 of title 28 for mileage by the most reasonable road distance;

(3) reasonable and necessary costs actually incurred in connection with any necessary search of title and lien records;

(4) necessary out-of-pocket costs incurred by the foreclosure commissioner to record documents; and

(5) a commission for the foreclosure commissioner for the conduct of the foreclosure to the extent authorized by regulations issued by the Secretary.

(Pub. L. 97–35, title III, § 369C, Aug. 13, 1981, 95 Stat. 429.)

§ 3712. Disposition of sale proceeds

Money realized from a foreclosure sale shall be made available for obligation and expenditure—

(1) first to cover the costs of foreclosure provided for in section 3711 of this title;

(2) then to pay valid tax liens or assessments prior to the mortgage;

(3) then to pay any liens recorded prior to 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) then to service charges and advancements for taxes, assessments, and property insurance premiums;

(5) then to the interest;

(6) then to the principal 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); and

(7) then to late charges.

Any surplus after payment of the foregoing shall be paid to holders of liens recorded after the mortgage and then to the appropriate mortgagor. 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 such 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 in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 97–35, title III, § 369D, Aug. 13, 1981, 95 Stat. 429.)

§ 3713. Transfer of title and possession

(a) Payment and delivery of deeds

The foreclosure commissioner shall deliver a deed or deeds to the purchaser or purchasers and

obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale.

(b) Quit claim deed

Subject to subsection (c) of this section, the foreclosure deed or deeds shall convey all of the right, title, and interest in the security property covered by the deed which the Secretary as holder, the foreclosure commissioner, the mortgagor, and any other persons claiming by, through, or under them, had on the date of execution of the mortgage, together with all of the right, title, and interest thereafter acquired by any of them in such property up to the hour of sale, and no judicial proceeding 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.

(c) Possession by purchaser; continuing interests

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title to the mortgaged property, subject to an interest or interests senior to that of the mortgage and subject to the terms of any lease of a residential tenant for the remaining term of the lease or for one year, whichever period is shorter. Any other person remaining in possession after the sale and any residential tenant remaining in possession after the applicable period shall be deemed a tenant at sufferance.

(d) Right of redemption; right of possession

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

(e) Imposition of tax on conveyance to the Secretary

When conveyance is made to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, whether as a tax upon the instrument or upon the privilege of conveying or transferring 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. 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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