

§ 27.5

§ 27.5 Prerequisites to foreclosure.

Before commencement of a foreclosure under the Act and this subpart, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

§ 27.10 Designation of a foreclosure commissioner.

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act and this subpart, the General Counsel will select and designate one or more foreclosure commissioners to conduct the foreclosure and sale. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute

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commissioner shall serve a copy of the written notice of designation upon the persons listed at sections 369(1) (A) through (C) of the Act (12 U.S.C. 3708(1) (A) through (C)) either by mail, in accordance with section 369(1) of the Act (12 U.S.C. 3708(1)), except that the time limitations in that section will not apply, or by any other manner which in the substitute commissioner's discretion is conducive to giving timely notice of substitution.

§ 27.15 Notice of default and foreclosure sale.

(a) Within 45 days after accepting his or her designation to act as commissioner, the commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale.

(b) The Notice of Default and Foreclosure Sale shall contain the following information:

(1) The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(2) Any terms and conditions to which the purchaser at the foreclosure sale must agree under § 27.20. The Notice need not describe at length each and every pertinent term and condition, including any required use agreements and deed covenants, if it describes these terms and conditions in a general way and if it states that the precise terms will be available from the commissioner upon request.

(c) The Notice need not be mailed to mortgagors who have been released from all obligations under the mortgage.

(d) In deciding which newspaper or newspapers to select as general circulation newspapers for purposes of publication of the required notice, the commissioner need not select the newspaper with the largest circulation.

(e) In addition to Notice posting requirements included in the Act, the Notice shall also be posted in the project office and in such other appropriate conspicuous places as the commissioner deems appropriate for providing notice to all tenants. Posting

shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(f) When service of the Notice of Default and Foreclosure Sale is made by mail, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under § 27.10(b), has designated him or her to act as commissioner.

(g) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

§ 27.20 Conditions of foreclosure sale.

(a) The requirements of section 367(b)(2)(A) of the Act (12 U.S.C. 3706(b)(2)(A)) apply if a majority of the residential units in a property subject to foreclosure sale pursuant to the Act and this subpart are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner.

(b) Terms which the Secretary may find appropriate to require pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)), and such other provisions of law as may be applicable, may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)) shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example: If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b),