

§ 27.25

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), any terms required by the Secretary pursuant to this section shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to this section if the foreclosure sale occurs more than five years after the completion of such rehabilitation work (signified by the due date for commencement of amortization payments in the section 312 loan note).

(d) The limitation contained in paragraph (c) of this section applies only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under this section and section 367(b) of the Act (12 U.S.C. 3706(b)) shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate

24 CFR Subtitle A (4-1-12 Edition)

covenants contained in the deed to be delivered by the foreclosure commissioner under § 27.45. Terms required by the Secretary pursuant to this section shall be stated or described in the Notice of Default and Foreclosure Sale under § 27.15.

(f) The defaulting mortgagor, or any principal, successor, affiliate, or assignee thereof, on the multifamily mortgage being foreclosed, shall not be eligible to bid on, or otherwise acquire, the property being foreclosed by the Department under this subpart or any other provision of law. A "principal" and an "affiliate" are defined as provided at 24 CFR 24.105.

[61 FR 48548, Sept. 13, 1996, as amended at 66 FR 35847, July 9, 2001]

§ 27.25 Termination or adjournment of foreclosure sale.

(a) Before withdrawing the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in section 369B(c) of the Act (12 U.S.C. 3710(c)).

(b) The commissioner may not withdraw the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)) more than once unless the Secretary consents in writing to such withdrawal.

(c) The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

§ 27.30 Conduct of the sale.

(a) The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Relatives of the commissioner who may not bid at the foreclosure sale include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local

government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.35 Foreclosure costs.

Pursuant to section 369C(5) of the Act (12 U.S.C. 3711(5)), a commission to the foreclosure commissioner for the conduct of the foreclosure will be paid in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.40 Disposition of sale proceeds.

(a) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(b) If there is more than one party holding a lien or assessment payable from sales proceeds, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(c) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 369C of the Act (12 U.S.C. 3711), and otherwise to audit the commissioner's disposition of the sale proceeds.

§ 27.45 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in sections 369D (1) through (3) of the Act (12 U.S.C. 3712(1) through (3)). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the purchaser of any use agreement referred to in § 27.20(e). Any covenants reflecting terms required by § 27.20 shall be contained in the commissioner's deed.

(b) Subject to any terms required to be agreed to by § 27.20, any commercial