

§ 27.109

which would be due under the mortgage agreement if payments under the mortgage had not been accelerated and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in the Statute, and the foreclosure commissioner must find that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Statute and this subpart or otherwise, to be canceled by curing a default.

(c) To obtain a presale reinstatement in cases involving a nonmonetary default:

(1) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, must find that all nonmonetary defaults are cured and that there are no monetary defaults; and

(2) There must be tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure as provided in the Statute.

(d) Before withdrawing the security property from foreclosure, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall also 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this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor

24 CFR Subtitle A (4-1-14 Edition)

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 foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be adjourned for 14 days, during which time it may be cancelled. Notice of the re-scheduled sale, if any, shall be served as described in § 27.111.

§ 27.109 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Default and Foreclosure Sale and in accordance with the provisions of the Statute.

(b) In addition to bids made in person at the sale, the foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure 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 in the Notice of Default and Foreclosure Sale. Before the close of the sale the commissioner shall announce the amount of the high bid and the name of the successful bidder. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

(c) *Prohibited participants.* Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during

Office of the Secretary, HUD

§ 27.117

the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(d) *Auctioneers.* 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.

§ 27.111 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale in accordance with the provisions of the Statute. The publication of the Notice of Default and Foreclosure Sale, revised pursuant to the Statute, may be made on any of three separate days before the revised date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. The commissioner must also, 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.

(b) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commis-

sioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

§ 27.113 Foreclosure costs.

A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.115 Disposition of sales proceeds.

The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 27.117 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 of tax liens and prior liens, as set forth in 12 U.S.C. 3762(a)(2) and (a)(3). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(b) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required under the Statute (12 U.S.C. 3764) in an affidavit or an addendum to the deed, the affidavit or addendum shall be accepted along with the deed for recordation. The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.