

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 before 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 covenants 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 submit-