

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 non-judicial, separately instituted by the Secretary to foreclose the mortgage other than under this chapter has been withdrawn, dismissed, or otherwise terminated.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 de-

scription 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 non-contiguous parcels of land, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such par-