(9) ''county'' means county as defined in section 2 of title 1; and

(10) ''Secretary'' means the Secretary of Housing and Urban Development.

(Pub. L. 97–35, title III, §363, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102–550, title V, §517(b), Oct. 28, 1992, 106 Stat. 3792.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of this title. Title X of the Act, which was classified principally to subchapter IX–A (§1749aa et seq.) of chapter 13 of this title, was repealed by Pub. L. 101–235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 312 of the Housing Act of 1964, referred to in par. (2)(B), is section 312 of Pub. L. 88–560, which was classified to section 1452b of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 101–625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in par. (2)(C), (D), is section 801 of Pub. L. 101–625.

AMENDMENTS

1992—Par. (2). Pub. L. 102–550 amended par. (2) generally. Prior to amendment, par. (2) read as follows: '' 'multifamily mortgage' means a mortgage held by the Secretary pursuant to title II of the National Housing Act or section 312 of the House Act of 1964 covering any property, except a property on which there is located a one- to four-family residence;''.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3703. Applicability

Multifamily mortgages held by the Secretary encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary. If the Secretary forecloses on any such mortgage pursuant to such other foreclosure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(Pub. L. 97–35, title III, §364, Aug. 13, 1981, 95 Stat. 423; Pub. L. 98–181, title I [title IV, §471], Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Pub. L. 98–181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§ 3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. The foreclosure commissioner, if a natural person, shall be a resident of the State in which the security property is located and, if not a natural person, the foreclosure commissioner must be duly authorized to transact business under the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name, except that where such person is designated in his or her capacity as an official or employee of the government of the State or 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 nonjudicial, 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