

(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 parcel. If the security property consists of two or more separate buildings, a copy of the notice of default and foreclosure sale shall be posted in a prominent place on each such building. Posting at or on the premises shall not be required where the foreclosure commissioner, in the commissioner's sole discretion, finds that the act of posting will likely cause a breach of the peace or that posting may result in an increased risk of vandalism or damage to the property.

(Pub. L. 97-35, title III, §369, Aug. 13, 1981, 95 Stat. 426.)

§ 3709. Presale reinstatement

(a) Grounds

Except as provided in sections 3707(b) and 3710(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

(1) the Secretary so directs the commissioner prior to or at the time of sale;

(2) the commissioner finds, upon application of the mortgagor at least three days prior to the date of sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the notice of default and foreclosure sale; or

(3)(A) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated; (B) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and (C) there is tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding additional amounts which would have been due if