

mortgage payments had been accelerated), all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3711 of this title, except that the Secretary shall have discretion to refuse to cancel a foreclosure pursuant to this paragraph (3) if the current mortgagor or owner of record has on one or more previous occasions caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

**(b) Views of Secretary**

Prior to withdrawing the security property from foreclosure in the circumstances described in subsection (a)(2) or (a)(3), the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

**(c) Mortgage subsequent to reinstatement**

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

**(d) Subsequent foreclosures**

If the foreclosure commissioner cancels a foreclosure sale under this chapter a new foreclosure may be subsequently commenced as provided in this chapter.

(Pub. L. 97-35, title III, §369A, Aug. 13, 1981, 95 Stat. 427.)

**§ 3710. Foreclosure sale**

**(a) Time of sale; public auction; location**

The date of foreclosure sale set forth in the notice of default and foreclosure sale shall not be prior to thirty days after the due date of the earliest installment wholly unpaid or the earliest occurrence of any uncured nonmonetary default upon which foreclosure is based. Foreclosure sale pursuant to this chapter shall be at public auction, and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time on a day other than Sunday or a public holiday as defined by section 6103(a) of title 5 or State law. The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale, which shall be a location where foreclosure real estate auctions are customarily held in the county or one of the counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any one of the counties in which any part of the security property is situated.

**(b) Conduct of sale**

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary. The foreclosure commissioner shall attend the foreclosure sale in person, or, if there are two or more commissioners, at least one shall attend the foreclosure sale. In the event that no foreclosure commissioner is a natural person, the

foreclosure commissioner shall cause its duly authorized employee to attend the foreclosure sale to act on its behalf. Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the commissioner at the sale. The Secretary and any other person may bid at the foreclosure sale, including the Secretary or any other person who has submitted a written one-price bid, except that the foreclosure commissioner or any relative, related business entity or employee of such commissioner or entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale. The foreclosure commissioner may serve as auctioneer, or, in accordance with regulations of the Secretary, may employ an auctioneer to be paid from the commission provided for in section 3711(5) of this title.

**(c) Adjournment or cancellation**

The foreclosure commissioner shall have discretion, prior to or at the time of sale, to adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's sole discretion, that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary or that additional time is necessary to determine whether the security property should be withdrawn from foreclosure as provided in section 3709 of this title. The foreclosure commissioner may adjourn a sale to a later hour the same day without the giving of further notice, or may adjourn the foreclosure sale for not less than nine nor more than twenty-four days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite that the foreclosure sale has been adjourned to a specified date and to include any corrections the foreclosure commissioner deems appropriate. Such notice shall be served by publication, mailing and posting in accordance with section 3708 of this title, except that publication may be made on any of three separate days prior to the revised date of foreclosure sale, and mailing may be made at any time at least seven days prior to the date to which the foreclosure sale has been adjourned.

(Pub. L. 97-35, title III, §369B, Aug. 13, 1981, 95 Stat. 428.)

**§ 3711. Foreclosure costs**

The following foreclosure costs shall be paid from the sale proceeds prior to satisfaction of any other claim to such sale proceeds:

- (1) necessary advertising costs and postage incurred in giving notice pursuant to sections 3708 and 3710 of this title;
- (2) mileage for posting notices and for the foreclosure commissioner's attendance at the sale at the rate provided in section 1921 of title 28 for mileage by the most reasonable road distance;
- (3) reasonable and necessary costs actually incurred in connection with any necessary search of title and lien records;
- (4) necessary out-of-pocket costs incurred by the foreclosure commissioner to record documents; and
- (5) a commission for the foreclosure commissioner for the conduct of the foreclosure to the