

§ 3754. Designation of foreclosure commissioner**(a) In general**

The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale

A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications

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 laws of the State in which the security property is located. No person shall be designated as a foreclosure commissioner unless that person is responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure**(1) Written designation**

The Secretary may designate a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners

The Secretary may, with or without cause, designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner.

(3) Number

More than 1 foreclosure commissioner may be designated at any time.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 805 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.

§ 3755. Prerequisites to foreclosure**(a) In general****(1) Upon breach of covenant or condition**

The Secretary is authorized to foreclose a mortgage under this chapter upon the breach of a covenant or condition in the mortgage agreement.

(2) No other pending proceedings**(A) Prior to commencement**

No foreclosure may be commenced under this chapter unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage (other than under this chapter), has been withdrawn, dismissed, or otherwise terminated.

(B) After commencement

No separately instituted foreclosure proceeding on a mortgage which is the subject of a foreclosure proceeding under this chapter shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter.

(b) Other rights unaffected

Nothing in this chapter shall preclude the Secretary from—

(1) enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment; or

(2) foreclosing under this chapter if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement, including the appointment of a receiver, mortgagee-in-possession status, or relief under an assignment of rents.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 806 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.

§ 3756. Commencement of foreclosure**(a) Request to foreclosure commissioner**

If the Secretary, as holder of a single family mortgage, determines that the prerequisites to foreclosure set forth in section 3755 of this title are satisfied, the Secretary may request the foreclosure commissioner to commence foreclosure of a single family 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 sections 3757 and 3758 of this title.

(b) Designation of substitute foreclosure commissioner

After commencement of a foreclosure under this chapter, the Secretary may designate a substitute foreclosure commissioner at any time before the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the foreclosure sale, or adjourn such sale in accordance with section 3760(c) of this title.

(c) Written notice

Upon designation of a substitute foreclosure commissioner, a copy of the written notice of such designation described in section 3754 of this title shall be served—

(1) by mail, as provided in section 3758 of this title (except that the minimum time periods between mailing and the date of foreclosure sale prescribed in such section shall not apply); or

(2) in any other manner which, in the substitute commissioner's sole discretion, is con-

ductive to achieving timely notice of such substitution.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 807 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.

§ 3757. Notice of default and foreclosure sale

The notice of default and foreclosure sale to be served in accordance with this chapter shall set forth—

- (1) the name and address of the foreclosure commissioner;
- (2) the date on which the notice is issued;
- (3) the names of—
 - (A) the Secretary;
 - (B) the original mortgagee (if other than the Secretary); and
 - (C) the original mortgagor;
- (4) the street address or a description of the location of the security property, and a description of the security property, sufficient to identify the property to be sold;
- (5) the date of the mortgage, the office in which the mortgage is recorded, and the liber number and folio or other appropriate description of the location of recordation of the mortgage;
- (6) identification of the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date on which the notice is issued upon which the foreclosure is based, or a description of any other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;
- (7) the date, time, and location of the foreclosure sale;
- (8) a statement that the foreclosure is being conducted pursuant to this chapter;
- (9) a description of the types of costs, if any, to be paid by the purchaser upon transfer of title;
- (10) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary) and the time and method of payment of the balance of the foreclosure purchase price; and
- (11) any other appropriate terms of sale or information, as the Secretary may determine.

(Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316.)

CODIFICATION

Section is based on section 808 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.

§ 3758. Service of notice of foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale described in section 3757 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) Timing

Not less than 21 days before the date of the foreclosure sale, the notice of default and fore-

closure sale shall be filed in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located or, if none, in the manner authorized by section 3201 of title 28.

(2) Notice by mail

(A) In general

The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following:

(i) Current owner

The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(ii) Mortgagors

All mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(iii) Dwelling units

All dwelling units in the security property (whether or not the notice describes a sale adjourned).

(iv) Other lienholders

All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale (whether or not the notice describes a sale adjourned).

(B) Timing

(i) Notice under clauses (i) and (ii)

Notice under clauses (i) and (ii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to the current owner and mortgagor at the last known address of the current owner and mortgagor, 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 current owner and mortgagor.

(ii) Notice under clause (iii)

Notice under clause (iii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or the security property has more than 1 dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iii) Notice under clause (iv)

Notice under clause (iv) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to each such lienholder's address of record or, at the discretion of