

of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement); and

(7) then to late charges.

Any surplus after payment of the foregoing shall be paid to holders of liens recorded after the mortgage and then to the appropriate mortgagor. If the person to whom such surplus is to be paid cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants cannot agree on the allocation of the surplus, or if any person claiming an interest in the mortgage proceeds does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. If such a procedure for the deposit of disputed funds is not available, and the foreclosure commissioner files a bill of interpleader or is sued as a stakeholder to determine entitlement to such funds, the foreclosure commissioner's necessary costs in taking or defending such action shall be deductible from the disputed funds.

(Pub. L. 97-35, title III, §369D, Aug. 13, 1981, 95 Stat. 429.)

§ 3713. Transfer of title and possession

(a) Payment and delivery of deeds

The foreclosure commissioner shall deliver a deed or deeds to the purchaser or purchasers and obtain the balance of the purchase price in accordance with the terms of sale provided in the notice of default and foreclosure sale.

(b) Quit claim deed

Subject to subsection (c), the foreclosure deed or deeds shall convey all of the right, title, and interest in the security property covered by the deed which the Secretary as holder, the foreclosure commissioner, the mortgagor, and any other persons claiming by, through, or under them, had on the date of execution of the mortgage, together with all of the right, title, and interest thereafter acquired by any of them in such property up to the hour of sale, and no judicial proceeding shall be required ancillary or supplementary to the procedures provided in this chapter to assure the validity of the conveyance or confirmation of such conveyance.

(c) Possession by purchaser; continuing interests

A purchaser at a foreclosure sale held pursuant to this chapter shall be entitled to possession upon passage of title to the mortgaged property, subject to an interest or interests senior to that of the mortgage and subject to the terms of any lease of a residential tenant for the remaining term of the lease or for one year, whichever period is shorter. Any other person remaining in possession after the sale and any residential tenant remaining in possession after the applicable period shall be deemed a tenant at sufferance.

(d) Right of redemption; right of possession

There shall be no right of redemption, or right of possession based upon right of redemption, in

the mortgagor or others subsequent to a foreclosure pursuant to this chapter.

(e) Imposition of tax on conveyance to the Secretary

When conveyance is made to the Secretary, no tax shall be imposed or collected with respect to the foreclosure commissioner's deed, whether as a tax upon the instrument or upon the privilege of conveying or transferring title to the property. Failure to collect or pay a tax of the type and under the circumstances stated in the preceding sentence shall not be grounds for refusing to record such a deed, for failing to recognize such recordation as imparting notice or for denying the enforcement of such a deed and its provisions in any State or Federal court.

(Pub. L. 97-35, title III, §369E, Aug. 13, 1981, 95 Stat. 430.)

§ 3714. Record of foreclosure and sale

(a) To establish a sufficient record of foreclosure and sale, the foreclosure commissioner shall include in the recitals of the deed to the purchaser or prepare an affidavit or addendum to the deed stating—

(1) that the mortgage was held by the Secretary;

(2) the particulars of the foreclosure commissioner's service of notice of default and foreclosure sale in accordance with sections 3708 and 3710 of this title;

(3) that the foreclosure was conducted in accordance with the provisions of this chapter and with the terms of the notice of default and foreclosure sale;

(4) a correct statement of the costs of foreclosure, calculated in accordance with section 3711 of this title; and

(5) the name of the successful bidder and the amount of the successful bid.

(b) The deed executed by the foreclosure commissioner, the foreclosure commissioner's affidavit and any other instruments submitted for recordation in relation to the foreclosure of the security property under this chapter shall be accepted for recordation by the registrar of deeds or other appropriate official of the county or counties in which the security property is located upon tendering of payment of the usual recording fees for such instruments.

(Pub. L. 97-35, title III, §369F, Aug. 13, 1981, 95 Stat. 430.)

§ 3715. Computation of time

Periods of time provided for in this chapter shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur for which the period of time is provided and including the day on which an event occurs or is to occur from which the period is to be calculated.

(Pub. L. 97-35, title III, §369G, Aug. 13, 1981, 95 Stat. 431.)

§ 3716. Separability

If any clause, sentence, paragraph or part of this chapter shall, for any reason, be adjudged by a court of competent jurisdiction to be in-

valid or invalid as applied to a class of cases, such judgment shall not affect, impair, or invalidate the remainder thereof and of this chapter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Pub. L. 97-35, title III, §369H, Aug. 13, 1981, 95 Stat. 431.)

§ 3717. Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this chapter.

(Pub. L. 97-35, title III, §369I, Aug. 13, 1981, 95 Stat. 431.)

CHAPTER 38A—SINGLE FAMILY MORTGAGE FORECLOSURE

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§ 3751. Findings and purpose

(a) Findings

The Congress finds that—

(1) the disparate State laws under which mortgages are foreclosed on behalf of the Secretary covering 1- to 4-family residential properties—

(A) burden certain programs administered by the Secretary;

(B) increase the costs of collecting obligations; and

(C) generally are a detriment to the community in which the properties are located;

(2) the long periods required to complete the foreclosure of such mortgages under certain State laws—

(A) lead to deterioration in the condition of the properties involved;

(B) necessitate substantial Federal holding expenditures;

(C) increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties; and

(D) adversely affect the neighborhoods in which the properties are located;

(3) these conditions seriously impair the ability of the Secretary to protect the Federal financial interest in the affected properties and frustrate attainment of the objectives of the underlying Federal program authority;

(4) the availability of uniform and more expeditious procedures, with no right of redemp-

tion in the mortgagor or others, for the foreclosure of these mortgages by the Secretary will tend to ameliorate these conditions; and

(5) providing the Secretary with a nonjudicial foreclosure procedure will reduce unnecessary litigation by removing many foreclosures from the courts if they contribute to overcrowded calendars.

(b) Purpose

The purpose of this chapter is to create a uniform Federal foreclosure remedy for single family mortgages that—

(1) are held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(2) secure loans obligated by the Secretary under section 1452b¹ of title 42.

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

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 1452b of title 42, referred to in subsec. (b)(2), was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section is based on section 802 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.

EFFECTIVE DATE

Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which is classified to this chapter, is incorporated into Pub. L. 103-327 and deemed enacted into law upon enactment of Pub. L. 103-327, which was approved Sept. 28, 1994.

SHORT TITLE

Section 801 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, title II [title VIII, §801], Sept. 28, 1994, 108 Stat. 2316, provided in part, that: "This title [enacting this chapter] may be cited as the 'Single Family Mortgage Foreclosure Act of 1994'."

§ 3752. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Bona fide purchaser

The term "bona fide purchaser" means a purchaser for value in good faith and without notice of any adverse claim, and who acquires the security property free of any adverse claim.

(2) County

The term "county" has the same meaning as in section 2 of title 1.

(3) Mortgage

The term "mortgage" means a deed of trust, mortgage, deed to secure debt, security agree-

¹ See References in Text note below.