

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 1452b<sup>1</sup> 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-

<sup>1</sup> See References in Text note below.

ment, or any other form of instrument under which any property (real, personal or mixed), or any interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), is conveyed in trust, mortgaged, encumbered, pledged, or otherwise rendered subject to a lien for the purpose of securing the payment of money or the performance of an obligation.

**(4) Mortgage agreement**

The term “mortgage agreement” means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

**(5) Mortgagor**

The term “mortgagor” means the obligor, grantor, or trustee named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not such owner is personally liable on the mortgage debt.

**(6) Owner**

The term “owner” means any person who has an ownership interest in property and includes heirs, devisees, executors, administrators, and other personal representatives, and trustees of testamentary trusts if the owner of record is deceased.

**(7) Person**

The term “person” includes any individual, group of individuals, association, partnership, corporation, or organization.

**(8) Record; recorded**

The terms “record” and “recorded” include “register” and “registered” in the instance of registered land.

**(9) Security property**

The term “security property” means the property (real, personal or mixed) or an interest in property (including leaseholds, life estates, reversionary interests, and any other estates under applicable State law), together with fixtures and other interests subject to the lien of the mortgage under applicable State law.

**(10) Single family mortgage**

The term “single family mortgage” means a mortgage that covers property on which there is located a 1- to 4-family residence, and that—

(A) is 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

(B) secures a loan obligated by the Secretary under section 1452b of title 42, as it existed before the repeal of that section by section 12839 of title 42 (except that a mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this chapter).

**(11) State**

The term “State” means—

- (A) the several States;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico;
- (D) the United States Virgin Islands;
- (E) Guam;
- (F) American Samoa;
- (G) the Northern Mariana Islands;
- (H) the Trust Territory of the Pacific Islands; and
- (I) Indian tribes, as defined by the Secretary.

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

REFERENCES IN TEXT

The National Housing Act, referred to in par. (10)(A), 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.

CODIFICATION

Section is based on section 803 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.

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.

**§ 3753. Applicability**

Single family mortgages 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.

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

CODIFICATION

Section is based on section 804 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.

**§ 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.