

**(2) Discretionary noncancellation**

The Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (1)(C) 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) Opportunity of Secretary to dispute withdrawal**

Before withdrawing the security property from foreclosure under subparagraph (B) or (C) of subsection (a)(1), the foreclosure commissioner shall afford the Secretary a reasonable opportunity to demonstrate why the security property should not be so withdrawn.

**(c) Effect of cancellation****(1) Mortgage unaffected**

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.

**(2) Commencement of new foreclosure sale**

Cancellation of a foreclosure sale under this chapter shall have no effect on the commencement of a subsequent foreclosure proceeding under this chapter.

**(d) Notice of cancellation**

The foreclosure commissioner shall file a notice of cancellation in the same place and manner provided for filing the notice of default and foreclosure sale in section 3758 of this title.

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

**Editorial Notes****CODIFICATION**

Section is based on section 810 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.

**§ 3760. Conduct of sale; adjournment****(a) In general****(1) Manner and time**

A foreclosure sale pursuant to this chapter shall be held 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.

**(2) Location**

The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale and such location shall be at a place where foreclosure real estate auctions are customarily held in the county or 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 1 of the counties in which any part of the security property is situated.

**(3) Sale of multiple properties**

The foreclosure commissioner may designate the order in which multiple security properties are sold.

**(b) Duties of foreclosure commissioner****(1) Conduct of sale****(A) In general**

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.

**(B) Written bids**

Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the foreclosure commissioner at the sale.

**(C) Auctioneer**

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 3761(5) of this title.

**(2) Eligible participants****(A) In general**

The Secretary, and any other person who has submitted a written one-price bid, may bid at the foreclosure sale.

**(B) Prohibited participants**

The foreclosure commissioner or any relative, related business entity, or employee of the foreclosure commissioner or a related business entity shall not be permitted to bid in any manner on the security property subject to foreclosure sale, except that the foreclosure commissioner or an auctioneer may be directed by the Secretary to enter a bid on the Secretary's behalf.

**(c) Adjournment or cancellation of sale****(1) General authority**

The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if the commissioner determines, in the commissioner's discretion, that—

(A) circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(B) additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 3759 of this title.

**(2) Adjournment to same or later day**

The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting the new time and place of the foreclosure sale, or may adjourn the foreclosure sale for not less than 9 and not more than 31 days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite the fact that the foreclosure sale has been adjourned to a specified date, as well as any other information the foreclosure commissioner deems appropriate. Such notice shall be served by publication and mailing in accordance with section 3758 of this title, except that publication may be made on any of 3 separate days before the revised date

of foreclosure sale, and mailing may be made at any time not less than 7 days before the date to which the foreclosure sale has been adjourned.

**(d) Cash deposits**

The foreclosure commissioner may require a bidder to make a cash deposit in an amount or percentage set by the foreclosure commissioner and stated in the notice of foreclosure sale before the bid is accepted. A successful bidder at the foreclosure sale who fails to comply with the terms of the sale may be required to forfeit the cash deposit or, at the election of the foreclosure commissioner after consultation with the Secretary, shall be liable to the Secretary for any costs incurred as a result of such failure.

**(e) Presumption of validity of sale**

Any foreclosure sale held in accordance with this chapter shall be conclusively presumed to have been conducted in a legal, fair, and reasonable manner. The sale price shall be conclusively presumed to be reasonable and equal to the fair market value of the property.

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

**Editorial Notes**

CODIFICATION

Section is based on section 811 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.

**§ 3761. Foreclosure costs**

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

**(1) Advertising and postage**

Necessary advertising costs and postage incurred in giving notice pursuant to sections 3758 and 3760 of this title.

**(2) Mileage**

Mileage (determined by the most reasonable road distance) for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale, as provided in section 1821 of title 28.

**(3) Title and lien search**

Reasonable and necessary costs incurred in connection with any search of title and lien records.

**(4) Recordation fees**

Costs incurred to record documents.

**(5) Commission**

A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure, to the extent such a commission is authorized by the Secretary.

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

**Editorial Notes**

CODIFICATION

Section is based on section 812 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.

**§ 3762. Disposition of sale proceeds**

**(a) Priority payments**

Money realized from a foreclosure sale shall be made available for obligation and expenditure in the following order:

**(1) Costs of foreclosure**

To cover the costs of the foreclosure proceeding described in section 3761 of this title.

**(2) Tax liens**

To pay valid tax liens or assessments if required by the notice of default and foreclosure sale.

**(3) Prior liens**

To pay any liens recorded before the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale.

**(4) Service charges and advances**

To pay service charges and advances for taxes, assessments, and property insurance premiums.

**(5) Interest**

To pay any outstanding interest.

**(6) Principal**

To pay the principal outstanding balance secured by the mortgage (including expenditures for the necessary protection, preservation, and repair of the security property as authorized under the mortgage agreement and interest thereon if provided for in the mortgage agreement).

**(7) Late charges or fees**

To pay any late charges or fees.

**(b) Other payments**

**(1) Other lienholders and the mortgagor**

Any surplus of proceeds from a foreclosure sale, after payment of the items described in subsection (a) shall be paid in the following order:

(A) First, to holders of liens recorded after the mortgage in the order of priority under Federal law or the law of the State in which the security property is located.

(B) Second, to the appropriate mortgagor.

**(2) Disputed claims**

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 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 incurred in taking or defending such action shall be deductible from the disputed funds.