

Editorial Notes

AMENDMENTS

1983—Pub. L. 98-181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§ 3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. 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 the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name, except that where such person is designated in his or her capacity as an official or employee of the government of the State or subdivision thereof in which the security property is located, such person may be designated by his or her unique title or position instead of by name. The Secretary shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to the preceding two sentences, the Secretary shall be fully subrogated to the rights satisfied by such payment.

(Pub. L. 97-35, title III, §365, Aug. 13, 1981, 95 Stat. 423.)

§ 3705. Prerequisites to foreclosure

Foreclosure by the Secretary under this chapter of a multifamily mortgage may be commenced, as provided in section 3707 of this title, upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage, except that no such foreclosure may be commenced unless any previously pending proceeding, judicial or non-

judicial, separately instituted by the Secretary to foreclose the mortgage other than under this chapter has been withdrawn, dismissed, or otherwise terminated. No such separately instituted foreclosure proceeding on the mortgage shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter. Nothing in this chapter shall preclude the Secretary from enforcing any right, other than foreclosure, under applicable State law, including any right to obtain a monetary judgment. Nothing in this chapter shall preclude the Secretary from foreclosing under this chapter where the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law or under the mortgage agreement, including, but not limited to, the appointment of a receiver, mortgagee-in-possession status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42.

(Pub. L. 97-35, title III, §366, Aug. 13, 1981, 95 Stat. 424; Pub. L. 102-550, title V, §517(c), Oct. 28, 1992, 106 Stat. 3792.)

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1992—Pub. L. 102-550 substituted “status, relief under an assignment of rents, or transfer to a nonprofit entity pursuant to section 1701q of this title or section 8013 of title 42” for “status or relief under an assignment of rents” in last sentence.

§ 3706. Notice of default and foreclosure sale; condition and term of sale

(a) The notice of default and foreclosure sale to be served in accordance with this chapter shall be subscribed with the name and address of the foreclosure commissioner and the date on which subscribed, and shall set forth the following information:

(1) the names of the Secretary, the original mortgagee and the original mortgagor;

(2) the street address or a description of the location of the security property, and a description of the security property, or so much thereof as is to be offered for sale, sufficient to identify the property to be sold;

(3) the date of the mortgage, the office in which the mortgage is recorded, and the liber and folio or other description of the location of recordation of the mortgage;

(4) the failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date the notice is subscribed, or the description of other default or defaults upon which foreclosure is based, and the acceleration of the secured indebtedness;

(5) the date, time, and place of the foreclosure sale;

(6) a statement that the foreclosure is being conducted pursuant to this chapter;

(7) the types of costs, if any, to be paid by the purchaser upon transfer of title; and

(8) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary), the time and method of payment of the balance of the foreclosure purchase price and other appropriate terms of sale.