

## Subpart B—Nonjudicial Foreclosure of Single Family Mortgages

### § 27.100 Purpose, scope and applicability.

(a) *Purpose.* The purpose of this subpart is to implement requirements for the administration of the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. 3751–3768, that clarify, or are in addition to, the requirements contained in the Statute, which are not republished here and must be consulted in conjunction with the requirements of this subpart.

(b) *Scope.* The Secretary may foreclose on any defaulted single family mortgage described in the Statute regardless of when the mortgage was executed.

(c) *Applicability.* The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted single family mortgages, including judicial foreclosure in State or Federal Court, and nonjudicial foreclosures under State law or any other Federal law. This subpart applies only to foreclosure procedures authorized by the Statute and not to any other foreclosure procedures the Secretary may use.

### § 27.101 Definitions.

The definitions contained in the Statute (at 12 U.S.C. 3752) shall apply to this subpart, in addition to and as further clarified by the following definitions. As used in this subpart:

*County* means a political subdivision of a State or Territory of the United States, created to aid in the administration of State law for the purpose of local self government, and includes a parish or any other equivalent subdivision.

*Mortgage* is as defined in the Statute except that the reference to property as “(real, personal or mixed)” means “any property (real or mixed real and personal).”

*Mortgage agreement* is as defined in the Statute, and also means any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument.

*Mortgagor* is as defined in the Statute, except that the reference to “trustee” means “trustor.”

*Record; Recorded* means to enter or entered in public land record systems established under State statutes for the purpose of imparting constructive notice to purchasers of real property for value and without knowledge, and includes “register” and “registered” in the instance of registered land, and “file” and its variants in the context of entering documents in public land records.

*Secretary* means the Secretary of Housing and Urban Development, acting by and through any authorized designee exclusive of the foreclosure commissioner.

*Security Property* is as defined in the statute except that the reference to property as “(real, personal or mixed)” means “any property (real or mixed real and personal).”

### § 27.102 Designation of foreclosure commissioner and substitute commissioner.

(a) The Secretary may designate foreclosure commissioners, including substitute commissioners, as set forth in the Statute.

(b) The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the Secretary. The execution of a designation pursuant to this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary. The designation is effective upon execution.

### § 27.103 Notice of default and foreclosure sale.

(a) The foreclosure commissioner shall commence the foreclosure under the procedures set forth in the Statute.

(b) The Notice of Default and Foreclosure Sale (Notice) shall include, in addition to the provisions as required by the Statute:

- (1) The foreclosure commissioner's telephone number;
- (2) A description of the security property sufficient to identify the property to be sold;
- (3) The date the mortgage was recorded;

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(4) Identification of the failure to make payment, including the entire amount delinquent as of a date specified, a statement generally describing the other costs that must be paid if the mortgage is to be reinstated, the due date of the earliest principal 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; and

(5) The bidding and payment requirements for the foreclosure sale, including the time and method of payment of the balance of the foreclosure purchase price, that all deposits and the balance of the purchase price shall be paid by certified or cashier's check, and that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

**§ 27.105 Service of Notice of Default and Foreclosure Sale.**

(a) The Notice of Default and Foreclosure Sale shall be served in accordance with the provisions of the Statute. When notice is sent by mail, multiple mailings are not required to be sent to any party with multiple capacities, e.g., an original mortgagor who is the security property owner and lives in one of the units. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(b) Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage.

**§ 27.107 Presale reinstatement.**

(a) The foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only in accordance with the provisions of the Statute and as more fully provided in paragraphs (b) and (c) of this section in regard to presale reinstatements.

(b) To obtain a presale reinstatement in cases involving a monetary default, there must be tendered to the foreclosure commissioner before public auction is completed all amounts which would be due under the mort-

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gage agreement if payments under the mortgage had not been accelerated and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in the Statute, and the foreclosure commissioner must find that there are no nonmonetary defaults; provided, however, that the Secretary may refuse to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Statute and this subpart or otherwise, to be canceled by curing a default.

(c) To obtain a presale reinstatement in cases involving a nonmonetary default:

(1) The foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, must find that all nonmonetary defaults are cured and that there are no monetary defaults; and

(2) There must be tendered to the foreclosure commissioner before public auction is completed all amounts due under the mortgage agreement (excluding all amounts which would be due under the mortgage agreement if the mortgage payments had been accelerated), including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure as provided in the Statute.

(d) Before withdrawing the security property from foreclosure, the foreclosure commissioner shall notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and shall also provide the Secretary with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, the Secretary shall have ten (10) days in which to demonstrate why the security property should not be withdrawn from foreclosure, and if the Secretary makes this demonstration, the property shall not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared