

§ 206.125

24 CFR Ch. II (4-1-08 Edition)

property as provided in § 206.127(a)(2); or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the mortgage balance, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term *mortgagor* as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term shall also mean the mortgagor's estate or personal representative.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1989, as amended at 60 FR 42761, Aug. 16, 1995]

§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable, unless the mortgage is due and payable by reason of the mortgagor's death. The mortgagee shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the mortgagor to pay any costs that the mort-

gagee incurred to reinstate the mortgagor, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The mortgagee shall obtain an appraisal of the property no later than 30 days after the mortgagor is notified that the mortgage is due and payable, or no later than 30 days after the mortgagee becomes aware of the mortgagor's death, or upon the mortgagor's request in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. The appraisal shall be at the mortgagor's expense unless the mortgage is due and payable. If the mortgage is due and payable, the appraisal shall be at the mortgagee's expense but the mortgagee shall have a right to be reimbursed out of the proceeds of any sale by the mortgagor.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure

of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is located or if Federal bankruptcy law does not permit the commencement of the foreclosure within six months from the date of the notice to the mortgagor that the mortgage is due and payable, the mortgagee shall commence foreclosure within six months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee must give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and must exercise reasonable diligence in prosecuting the foreclosure proceedings to completion and in acquiring title to and possession of the property. A time frame that is determined by the Secretary to constitute "reasonable diligence" for each State is made available to mortgagees.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If a party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage balance.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall take possession of, preserve and repair the property and shall make diligent efforts to sell the property within six months from the date the mortgagee acquired the property. Repairs shall

not exceed those required by local law and, in cases where the sale is made with a mortgage insured by the Secretary or guaranteed by the Secretary of Veterans Affairs, those necessary to meet the objectives of the property standards required for mortgages insured by the Secretary. No other repairs shall be made without the specific advance approval of the Secretary. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary of HUD or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Secretary of HUD or guaranteed, insured or taken by the Secretary of Veterans Affairs.

(3) The mortgagee shall not enter into a contract for the preservation, repair or sale of the property with any officer, employee, owner of ten percent or more interest in the mortgagee or with any other person or organization having an identity of interest with the mortgagee or with any relative of such officer, employee, owner or person.

(Approved by the Office of Management and Budget under control number 2528-0133)

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42761, Aug. 16, 1995; 61 FR 49034, Sept. 17, 1996]

§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made.