

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 27 and 29**

[Docket No. FR-4110-F-01]

RIN 2501-AC29

Office of the Secretary; Multifamily and Single Family Nonjudicial Foreclosure Procedures Streamlining

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule is a part of HUD's regulatory reinvention initiative. It combines the current rules for multifamily and single family nonjudicial foreclosure at 24 CFR parts 27 and 29, respectively, into separate subparts of part 27, thereby eliminating a CFR part. In addition, this rule streamlines the multifamily requirements in the current part 27, which repeats substantial portions of the authorizing statute, and removes certain single family requirements in the current part 29 that are more restrictive than the authorizing statute.

EFFECTIVE DATE: October 15, 1996.**FOR FURTHER INFORMATION CONTACT:**

With respect to Single Family Housing: Bruce S. Albright, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 9240, Washington, DC 20410, (202) 708-0080. A telecommunications device for the hearing impaired (TTY) is available at (202) 708-3259. (These are not toll-free numbers.)

With respect to Multifamily Housing: Herbert Goldblatt, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 10184, Washington, DC 20410, (202) 708-3200. A telecommunications device for the hearing impaired (TTY) is available at (202) 708-3259. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. General Background**

On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD has determined that the regulations for the Nonjudicial Foreclosure of Multifamily Mortgages at 24 CFR part 27 can be improved and streamlined by eliminating unnecessary provisions. The regulations for

Nonjudicial Foreclosure of Single Family Mortgages at 24 CFR part 29 were already issued in streamlined form in a final rule published on November 15, 1995 (60 FR 57489). The Department has determined that these single family provisions may appropriately be consolidated with the multifamily provisions as a separate subpart in 24 CFR part 27. This rule also removes certain single family requirements, as explained below in this preamble, that are more restrictive than the authorizing statute.

The combined statutory and regulatory procedures for conducting nonjudicial foreclosures have been placed in appendices to this final rule. Appendix A provides a Guide for the multifamily procedures; Appendix B provides a Guide for the Single Family provisions. The final rule will be codified in the Code of Federal Regulations; the appendices will not be codified. However, the appropriate appendix will be included in information to be provided to foreclosure commissioners, and which will be available to the public. HUD is striving to keep communications about requirements as clear, simple and timely as possible, and the Guides in the appendices present such a format.

II. Multifamily Rule Changes

Several provisions in the multifamily nonjudicial foreclosure regulations repeat statutory language from the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701 *et seq.*). It is unnecessary to maintain statutory requirements in the Code of Federal Regulations (CFR), since those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this rule will remove repetitious statutory language and, where appropriate, replace it with a citation to the specific statutory section.

Also being deleted from the regulatory text of part 27 is language that is only advisory, such as the list of examples of terms which the Secretary may require the purchaser to agree to in the current § 27.20(c).

III. Single Family Rule Changes

The single family requirements in the current part 29 have already been streamlined in a final rule published on November 15, 1995 (60 FR 57484). These requirements are moved in this final rule to become subpart B of part 27, and part 29 is removed.

As a result of the initial use of this new authority to foreclose mortgages by

nonjudicial procedures, the Department has noted three areas where the regulations at 24 CFR §§ 29.103(b)(2), 29.109(b) and 29.111(a) are more restrictive than the authorizing statute, the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. 3751-3768. Because these restrictions present problems for efficient and cost-effective implementation of the Statute, they are being removed. The regulatory provisions in question, discussed below, require inclusion of the description of the property as contained in the security instrument in the Notice of Default and Foreclosure Sale; the presence of the designated foreclosure commissioner at the foreclosure sale; and the service by publication of the Notice of Default and Foreclosure Sale prior to the revised date of an adjourned foreclosure sale.

Property Description in the Notice of Default and Foreclosure Sale

In 12 U.S.C. 3757(4), the Notice of Default and Foreclosure Sale is to include, among other items, “* * * the street address or a description of the location of the property, *and a description of the security property sufficient to identify the property to be sold.*” [Underlining provided.] The provisions of the existing regulation on this point, at 24 CFR 29.103(b)(2), are more restrictive than the Statute. The regulatory provisions state that the Notice of Default and Foreclosure Sale must contain, among other things, “[t]he legal description of the security property *as contained in the mortgage agreement.*” [Underlining provided.] HUD has found that in some jurisdictions, the description contained in the security instrument can be very lengthy, in fact, much longer than would be necessary to sufficiently identify the property to be sold at the foreclosure sale. Requiring an unnecessarily lengthy legal description can, in some instances, result in additional expense in publishing the Notice of Default and Foreclosure Sale, resulting in increased costs to the insurance funds.

In order to correct this situation, § 29.103(b)(2) of the existing rule is revised at § 27.103(b)(2) of this rule to conform the regulation to the less restrictive language in the statute.

Presence of the Foreclosure Commissioner at the Sale

While section 369B(b) of the Multifamily Housing Mortgage Foreclosure Act of 1981 (12 U.S.C. 3710), pertaining to the conduct of the sale, specifically requires the attendance of the foreclosure commissioner at the foreclosure sale, the provisions of the

Single Family Mortgage Foreclosure Act of 1994 governing the conduct of the sale are silent on attendance by the commissioner at the sale, see 12 U.S.C. 3760. Furthermore, Section 3760(b)(1)(C) of 12 U.S.C. specifically provides that "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)." At section 3761(2) of 12 U.S.C., the statutory authority governing foreclosure costs provides for the payment of costs arising from "[m]ileage * * * for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale * * *." [Underlining provided.]

The regulations at 24 CFR 29.109(b) presently provide that the foreclosure commissioner or, an employee of the commissioner, if the commissioner is not a natural person, must attend the foreclosure sale. This has been found to be restrictive in situations where a sole single family property is a great distance from a foreclosure commissioner's location. This results in the commissioner having to spend an inordinate amount of time and travel expense in order to personally attend the sale or, in the alternative, it results in the unavailability of foreclosure commissioners to accept such case referrals. The regulation is therefore amended in this rule by not including the language of § 29.109(b).

Service by Publication of Notice of an Adjourned Foreclosure Sale

The Statute at 12 U.S.C. 3760(c)(2) requires service by publication and mailing of the revised Notice of Default and Foreclosure Sale when a sale is adjourned to a later date, and permits publication to be made on any of three separate days before the revised date of foreclosure sale. The current section § 29.111(a) requires publication of the Notice of Default and Foreclosure Sale to be made on any of three consecutive days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the date to which the sale has been adjourned. This requirement could in some circumstances be impossible to comply with, because it does not take into account cases in which there are no daily newspapers of general circulation that would permit publication on three consecutive days. The requirement in § 29.111(a) for the first publication to be made at least seven days before the sale is also not part of the Statute, which only makes service by mail subject to the seven days requirement.

This rule, at § 27.111(a), returns to the statutory language permitting publication to be made on any of three separate days before the revised date of foreclosure sale. In addition, to give full implementation to the Statute, which allows adjournment of the foreclosure sale for "not less than 9 and not more than 31 days," this rule takes into account cases in which the frequency of publication of newspapers of general circulation would not permit publication on three separate days before the date to which the sale has been adjourned. To avoid the frustration of the statutory provision that permits adjournments of not less than 9 days, this rule provides that if there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. This provision is modeled on the exception to publication by posting provision in the Statute at 12 U.S.C. 3758(3)(B), and avoids such a Statute-frustrating result as not being able to adjourn a foreclosure sale for less than 21 days in an area where a newspaper is published only weekly.

IV. Findings and Certifications

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that good cause exists to publish this rule for effect without first soliciting public comment. This rule merely removes unnecessary regulatory provisions and does not establish or affect substantive policy. Therefore, prior public comment is unnecessary.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal

mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply amends an existing regulation by consolidating and streamlining provisions. It does not change the environmental review procedures or the physical impact of the program or the projects assisted under the regulations being amended.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes that would affect the relationship between the Federal Government and State and local governments will result from this rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

List of Subjects

24 CFR Part 27

Administrative practice and procedure, Loan programs—housing and community development.

24 CFR Part 29

Administrative practice and procedure, Loan programs—housing and community development.

Accordingly, under the authority 420 U.S.C. 3535(d) subtitle A of title 24 of the Code of Federal Regulations is amended as follows:

1. Part 27 is revised to read as follows:

**PART 27—NONJUDICIAL
FORECLOSURE OF MULTIFAMILY
AND SINGLE FAMILY MORTGAGES**

**Subpart A—Nonjudicial Foreclosure of
Multifamily Mortgages**

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Authority: 12 U.S.C. 1715b, 3701–3717, 3751–3768; 42 U.S.C. 1452b, 3535(d).

**Subpart A—Nonjudicial Foreclosure of
Multifamily Mortgages**

§ 27.1 Purpose.

The purpose of this subpart is to implement requirements for the administration of the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701–3717), that clarify, or are in addition to, the requirements contained in the Act, which are not republished here and must be consulted in conjunction with the requirements of this subpart. The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. Under a

delegation of authority published on February 5, 1982 (47 FR 5468), the Secretary has delegated to the HUD General Counsel his powers under the Act to appoint a foreclosure commissioner or commissioners and to substitute therefor, to fix the compensation of commissioners, and to promulgate implementing regulations.

§ 27.2 Scope and applicability.

(a) Under the Act and this subpart, the Secretary may foreclose on any defaulted Secretary-held multifamily mortgage encumbering real estate in any State. The Secretary may use the provisions of these regulations to foreclose on any multifamily mortgage regardless of when the mortgage was executed.

(b) The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted multifamily mortgages, including judicial foreclosure in Federal court and nonjudicial foreclosure under State law. This subpart applies only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

§ 27.3 Definitions.

The definitions contained in the Act (at 12 U.S.C. 3702) shall apply to this subpart, in addition to and as further clarified by the following definitions. As used in this subpart:

General Counsel means the General Counsel of the Department of Housing and Urban Development;

Multifamily mortgage does not include a mortgage covering a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), or section 811 (42 U.S.C. 8013) of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

§ 27.5 Prerequisites to foreclosure.

Before commencement of a foreclosure under the Act and this subpart, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

§ 27.10 Designation of a foreclosure commissioner.

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act and this subpart, the General Counsel will select and designate one or more foreclosure commissioners to conduct the foreclosure and sale. The method of selection and determination of the qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute commissioner shall serve a copy of the written notice of designation upon the persons listed at sections 369(1) (A) through (C) of the Act (12 U.S.C. 3708(1) (A) through (C)) either by mail, in accordance with section 369(1) of the Act (12 U.S.C. 3708(1)), except that the time limitations in that section will not apply, or by any other manner which in the substitute commissioner's discretion is conducive to giving timely notice of substitution.

§ 27.15 Notice of default and foreclosure sale.

(a) Within 45 days after accepting his or her designation to act as commissioner, the commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale.

(b) The Notice of Default and Foreclosure Sale shall contain the following information:

(1) The Notice shall state that all deposits and the balance of the purchase price shall be paid by certified or cashier's check. The Notice shall state that no deposit will be required of the Secretary when the Secretary bids at the foreclosure sale.

(2) Any terms and conditions to which the purchaser at the foreclosure sale must agree under § 27.20. The Notice need not describe at length each and every pertinent term and condition, including any required use agreements and deed covenants, if it describes these terms and conditions in a general way and if it states that the precise terms will be available from the commissioner upon request.

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

(d) In deciding which newspaper or newspapers to select as general circulation newspapers for purposes of publication of the required notice, the commissioner need not select the newspaper with the largest circulation.

(e) In addition to Notice posting requirements included in the Act, the Notice shall also be posted in the project office and in such other appropriate conspicuous places as the commissioner deems appropriate for providing notice to all tenants. Posting shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(f) When service of the Notice of Default and Foreclosure Sale is made by mail, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under § 27.10(b), has designated him or her to act as commissioner.

(g) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

§ 27.20 Conditions of foreclosure sale.

(a) The requirements of section 367(b)(2)(A) of the Act (12 U.S.C. 3706(b)(2)(A)) apply if a majority of the residential units in a property subject to foreclosure sale pursuant to the Act and

this subpart are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner.

(b) Terms which the Secretary may find appropriate to require pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)), and such other provisions of law as may be applicable, may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject

to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to section 367(b) of the Act (12 U.S.C. 3706(b)) shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example: If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b), any terms required by the Secretary pursuant to this section shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to this section if the foreclosure sale occurs more than five years after the completion of such rehabilitation work (signified by the due date for commencement of amortization payments in the section 312 loan note).

(d) The limitation contained in paragraph (c) of this section applies only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under this section and section 367(b) of the Act (12 U.S.C. 3706(b)) shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate covenants contained in the deed to be delivered by the foreclosure commissioner under § 27.45. Terms required by the Secretary pursuant to this section shall be stated or described in the Notice of Default and Foreclosure Sale under § 27.15.

§ 27.25 Termination or adjournment of foreclosure sale.

(a) Before withdrawing the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall 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 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in section 369B(c) of the Act (12 U.S.C. 3710(c)).

(b) The commissioner may not withdraw the security property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)) more than once unless the Secretary consents in writing to such withdrawal.

(c) The commissioner shall, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure under section 369A(a) of the Act (12 U.S.C. 3709(a)), the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

§ 27.30 Conduct of the sale.

(a) The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Relatives of the commissioner who may not bid at the foreclosure sale include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the

commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.35 Foreclosure costs.

Pursuant to section 369C(5) of the Act (12 U.S.C. 3711(5)), a commission to the foreclosure commissioner for the conduct of the foreclosure will be paid in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.40 Disposition of sale proceeds.

(a) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(b) If there is more than one party holding a lien or assessment payable from sales proceeds, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(c) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 369C of the Act (12 U.S.C. 3711), and otherwise to audit the commissioner's disposition of the sale proceeds.

§ 27.45 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in sections 369D (1) through (3) of the Act (12 U.S.C. 3712(1) through (3)). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the

purchaser of any use agreement referred to in § 27.20(e). Any covenants reflecting terms required by § 27.20 shall be contained in the commissioner's deed.

(b) Subject to any terms required to be agreed to by § 27.20, any commercial tenant and any residential tenant remaining in possession after the expiration of his or her lease or after the passage of one year, whichever event occurs first, shall be deemed a tenant at sufferance and may be evicted in accordance with applicable State or local law.

§ 27.50 Management and disposition by the Secretary.

When the Secretary is the purchaser of the security property, the Secretary shall manage and dispose of it in accordance with section 203 of the Housing and Community Development Amendments of 1978, as amended, 12 U.S.C. 1701z-11, and in accordance with 24 CFR part 290.

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).”

§ 29.102 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;

(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 mortgage 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 by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be adjourned for 14 days, during which time it may be cancelled. Notice of the re-scheduled sale, if any, shall be served as described in § 27.111.

§ 27.109 Conduct of sale.

(a) The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Default and Foreclosure Sale and in

accordance with the provisions of the Statute.

(b) In addition to bids made in person at the sale, the foreclosure commissioner shall accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale the commissioner shall announce the amount of the high bid and the name of the successful bidder. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

(c) *Prohibited participants.* Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(d) *Auctioneers.* If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located.

§ 27.111 Adjournment or cancellation of sale.

(a) The foreclosure commissioner may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale in accordance with the provisions of the Statute. The publication of the Notice of Default and Foreclosure Sale, revised pursuant to the Statute, may be made on any of three separate days before the revised

date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. The commissioner must also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(b) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

§ 27.113 Foreclosure costs.

A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

§ 27.115 Disposition of sales proceeds.

The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

§ 27.117 Transfer of title and possession.

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens, as set forth in 12 U.S.C. 3762(a)(2) and (a)(3). If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(b) The register of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by

the foreclosure commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations required under the Statute (12 U.S.C. 3764) in an affidavit or an addendum to the deed, the affidavit or addendum shall be accepted along with the deed for recordation. The Clerk of the Court or other appropriate official shall cancel all liens as requested by the foreclosure commissioner.

§ 27.119 Redemption rights.

Only for purposes of redemption rights under the Statute, a foreclosure shall be considered completed upon the date and at the time of the foreclosure sale.

§ 27.121 Record of foreclosure and sale.

The statements regarding the foreclosed mortgage required to establish a sufficient record shall include the date the mortgage was recorded. The statements regarding the service of the Notice of Default and Foreclosure Sale shall include the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

§ 27.123 Deficiency judgment.

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after disposition of sale proceeds in accordance with the order of priority provided under the Statute, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, unless such an action is specifically prohibited by the mortgage.

PART 29—[REMOVED]

2. Part 29 is removed.

Dated: August 28, 1996.
Henry G. Cisneros,
Secretary.

Note: The following appendices A and B will not be codified in title 24 of the Code of Federal Regulations.

Appendix A: Nonjudicial Foreclosure of Multifamily Mortgages—Guide

Sec.

1. Purpose.
2. Scope and applicability.
3. Definitions.

4. Prerequisites to foreclosure.
5. Designation of a foreclosure commissioner.
6. Notice of default and foreclosure sale.
7. Conditions of foreclosure sale.
8. Termination or adjournment of foreclosure sale.
9. Conduct of the sale.
10. Foreclosure costs.
11. Disposition of sale proceeds.
12. Transfer of title and possession.
13. Redemption rights.
14. Record of foreclosure and sale.
15. Management and disposition by the Secretary.
16. Computation of time.

1. Purpose

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements of the Multifamily Mortgage Foreclosure Act of 1981 (the Act) (12 U.S.C. 3701–3717). Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR part 27, subpart A, is the primary, governing source for regulatory requirements, and the Act is the primary, governing source for statutory requirements. Any reference in this Guide to the provisions of the Act includes the requirements of 24 CFR part 27, subpart A.

The Act creates a uniform Federal remedy for foreclosure of multifamily mortgages. Under a delegation of authority published on February 5, 1982 (47 FR 5468), the Secretary has delegated to the HUD General Counsel his powers under the Act to appoint a foreclosure commissioner or commissioners and to substitute therefor, to fix the compensation of commissioners, and to promulgate implementing regulations.

2. Scope and Applicability

(a) Under the Act, the Secretary may foreclose on any defaulted Secretary-held multifamily mortgage encumbering real estate in any State, regardless of when the mortgage was executed.

(b) The Secretary may, at the Secretary's option, use other procedures to foreclose defaulted multifamily mortgages, including judicial foreclosure in Federal court and nonjudicial foreclosure under State law. The requirements described in this Guide apply only to foreclosure procedures authorized by the Act and not to any other foreclosure procedures the Secretary may use.

3. Definitions

As used in this Guide:

County means county as defined in section 2 of title I, United States Code.

General Counsel means the General Counsel of the Department of Housing and Urban Development.

Mortgage means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any interest in 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.

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 instruments incorporated by reference therein (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt.

Multifamily mortgage means a mortgage held by the Secretary, covering any property pursuant to:

(1) Section 608 of the National Housing Act (12 U.S.C. 1743);

(2) Section 801 of the National Housing Act (12 U.S.C. 1748);

(3) Title II of the National Housing Act (12 U.S.C. 1707–1715z-20);

(4) Title X of the National Housing Act (12 U.S.C. 1749aa);

(5) Section 312 of the Housing Act of 1964, as it existed immediately before its repeal by section 289 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1452b);

(6) Section 202 of the Housing Act of 1959, as it existed immediately before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q);

(7) Section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); and

(8) Section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013).

Multifamily mortgage does not include a property on which there is located a one- to four-family residence, except when the one- to four-family residence is subject to a mortgage pursuant to section 202 of the Housing Act of 1959, or section 811 of the National Affordable Housing Act. The definition of multifamily mortgage also includes a mortgage taken by the Secretary in connection with the previous sale of the project by the Secretary (purchase money mortgage).

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

Record and *recorded* include register and registered in the instance of registered land.

Secretary means the Secretary of Housing and Urban Development.

Security property means the property, real, personal or mixed, or an interest in property, including leaseholds, life estates, reversionary interest 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.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary.

4. Prerequisites to Foreclosure

(a) The Secretary may commence foreclosure under the Act upon the breach of a covenant or condition in the mortgage agreement for which foreclosure is authorized under the mortgage. No such foreclosure may be commenced unless any previously pending proceeding, judicial or nonjudicial, separately instituted by the Secretary to foreclose the mortgage in a manner other than under the Act, has been withdrawn, dismissed or otherwise terminated. The Secretary shall not institute any separate foreclosure proceedings, judicial or nonjudicial, during the pendency of a foreclosure pursuant to the Act. Nothing in the Act 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 the Act shall preclude the Secretary from foreclosing under the Act 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 in accordance with section 202 of the Housing Act of 1959 (as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act), or section 811 of the Cranston-Gonzalez National Affordable Housing Act.

(b) Before commencement of a foreclosure under the Act, HUD will provide to the mortgagor an opportunity informally to present reasons why the mortgage should not be foreclosed. Such opportunity may be provided before or after the designation of the foreclosure commissioner but before service of the notice of default and foreclosure.

5. Designation of a Foreclosure Commissioner

(a) When the Secretary determines that a multifamily mortgage should be foreclosed under the Act, the General Counsel will select and designate a foreclosure commissioner to conduct the foreclosure and sale. In order to conduct the foreclosure, the foreclosure commissioner has a nonjudicial power of sale. The commissioner, if a natural person, shall be a resident of the State in which the security property is located. If a natural person is designated as commissioner, he or she shall be designated by name, except if the commissioner is designated in his or her capacity as an official or employee of the State or local government where the security property is located, the designation may be made by title or position instead of by name. If not a natural person, the commissioner must be duly authorized to transact business under the laws of the State in which the security property is located. The commissioner shall be a person who is determined by the General Counsel to be responsible, financially sound, and competent to conduct the foreclosure. The foreclosure commissioner may be an individual, group of individuals, association, partnership, corporation or organization. The method of selection and determination of the

qualifications of the foreclosure commissioner shall be at the discretion of the General Counsel, and the execution of a designation pursuant to paragraph (b) of this section shall be conclusive evidence that the commissioner selected has been determined to be qualified by the General Counsel.

(b) After selection of a foreclosure commissioner, the General Counsel shall designate the commissioner in writing to conduct the foreclosure and sale of the particular multifamily mortgage. The written designation shall be duly acknowledged and shall state the name and business or residential address of the commissioner and any other information the General Counsel deems necessary. The designation shall be effective upon execution by the General Counsel or his designate. Upon receipt of the designation, the commissioner shall demonstrate acceptance by signing the designation and returning a signed copy to the General Counsel.

(c) The General Counsel may designate more than one commissioner to foreclose a multifamily mortgage.

(d) The General Counsel may at any time, with or without cause, designate a substitute commissioner to replace a previously designated commissioner. Designation of a substitute commissioner shall be in writing and shall contain the same information and be made effective in the same manner as the designation of the original commissioner. Upon designation of a substitute commissioner, the substitute commissioner shall serve a copy of the written notice of designation upon the persons listed at sections 6.(c) (1) through (3) of this Guide either by mail, in accordance with section 6.(c) of this Guide, except that the time limitations in that section will not apply, or by any other manner which in the substitute commissioner's discretion is conducive to giving timely notice of substitution.

(e) The Secretary shall be the guarantor of payment of any judgment against the foreclosure commissioner for damages based on 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 this paragraph, the Secretary shall be fully subrogated to the rights satisfied by such payment.

6. Notice of Default and Foreclosure Sale

(a) Within 45 days after accepting his or her designation to act as commissioner, the commissioner shall commence the foreclosure by serving a Notice of Default and Foreclosure Sale.

(b) The Notice of Default and Foreclosure Sale shall contain the following information which, except for paragraphs (b) (2) and (9) of this section, will be supplied to the commissioner by the Secretary.

(1) Name and address of the foreclosure commissioner.

(2) Date of the Notice.

(3) Names of the Secretary, the original mortgagor and the original mortgagee.

(4) A description of the location of the security property, or portion thereof to be

sold, which is sufficient to identify it including, if appropriate, the street address.

(5) The date of the mortgage.

(6) The name of the office or offices in which the mortgage is recorded.

(7) The book and page in which the mortgage was recorded or, if appropriate, the mortgage's document or accession number.

(8) A description of the mortgagor's failure to make payment, including the due date of the earliest installment payment remaining wholly unpaid as of the date of the Notice or, if appropriate, of the other default or defaults upon which foreclosure is based; and a statement that the secured debt has been accelerated.

(9) The date, exact time and place of the foreclosure sale. The sale shall not be scheduled for a date less than 30 days after the due date of the earliest unpaid installment or the earliest occurrence of a nonmonetary default. The sale must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time on a day other than Sunday or a public holiday as defined by 5 U.S.C. 6103(a) or State law. The sale must be scheduled for (i) a place where real estate foreclosure auctions are customarily held in the county or one of the counties in which the property to be sold is located, or (ii) a courthouse in such a county, or (iii) a site at or on the property to be sold. Sale of property located in more than one county may be held in any one of the counties in which any part of the security property is situated.

(10) A statement that the foreclosure is being conducted in accordance with the Act.

(11) The costs, if any, to be paid by the purchaser upon transfer of title.

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

(13) Any terms and conditions to which the purchaser at the foreclosure sale must agree, as listed in section 7 of this Guide. The Notice need not describe at length each and every pertinent term and condition, including any required use agreements and deed covenants, if it describes these terms and conditions in a general way and if it states that the precise terms will be available from the commissioner upon request.

(c) The commissioner shall serve the Notice of Default and Foreclosure Sale upon the following persons in the following manner, and no additional notice shall be required to be served notwithstanding any notice requirements of State or local law:

(1) By certified or registered mail, return receipt requested, sent, at least 21 days before the original scheduled date of the foreclosure sale, to the owner of record of the security property as of 45 days before the original scheduled date of the foreclosure sale. The Notice shall be mailed to the owner at the address shown in the mortgage or to the address of the security property, or, in the

commissioner's discretion, to any address believed to be that of the owner; and

(2) By certified or registered mail, return receipt requested, sent, at least 21 days before the original scheduled date of the foreclosure sale, to the original mortgagor and all subsequent mortgagors of record and all other persons who appear on the public record or in the mortgage agreement to be liable for all or part of the mortgage debt. The Notice need not be mailed to mortgagors who have been released from all obligations under the mortgage. The Notice shall be mailed to the mortgagor at the address shown in the mortgage, or to the address of the property, or, in the commissioner's discretion, to any address believed to be that of the mortgagor or mortgagors; and

(3) By certified or registered mail, return receipt requested, sent, at least 10 days before the original scheduled date of the foreclosure sale, to all persons having liens of record on the security property which were placed on record at least 45 days before the scheduled foreclosure sale. The Notice shall be mailed to lien holders at their address of record, or to any address the commissioner believes to be that of the lien holder; and

(4) By publication of a copy of the Notice of Default and Foreclosure Sale once a week during three successive calendar weeks in a newspaper of general circulation in the county or counties in which the security property is located. To the extent practicable, the newspaper or newspapers chosen shall have circulation which is conducive to achieving notice of foreclosure by publication. In deciding which newspaper or newspapers have such circulation, the commissioner need not select the newspaper with the largest circulation. The date of the last publication shall be not less than four nor more than twelve days before the sale date. If there is no newspaper of general circulation in the county or counties in which the security property is located, service shall be made by posting the Notice of Default and Foreclosure Sale in at least three public places in each such county at least 21 days prior to the date of sale. The Notice of Default and Foreclosure Sale which is published pursuant to this paragraph may omit a description of the default, as otherwise required by paragraph (b)(8) of this section, if the commissioner, in his or her discretion, so determines; and

(5) By posting a copy of the Notice of Default and Foreclosure Sale in a prominent place at or near the security property for at least 15 consecutive days before the foreclosure sale. If the property to be sold consists of two or more noncontiguous parcels of land, a copy of the Notice shall be posted in a prominent place on each such parcel. If the property consists of two or more separate buildings, a copy of the Notice shall be posted in a prominent place on each such building. The Notice shall also be posted in the project office and in such other appropriate conspicuous places as the commissioner deems appropriate for providing notice to all tenants. Posting shall not be required if the commissioner in his or her discretion finds that the act of posting is likely to lead to a breach of the peace or may result in the increased risk of vandalism or

damage to the property. Any such finding will be made in writing. Entry on the premises by the commissioner for the purpose of posting shall be privileged as against all other persons.

(d) Service made under paragraphs (c) (1), (2), and (3) of this section is deemed to have been made upon mailing, whether or not the Notice was received and whether or not a return receipt is received or the letter containing the Notice is returned.

(e) When service of the Notice of Default and Foreclosure Sale is made pursuant to paragraph (c) (1), (2), or (3) of this section, the commissioner shall at the same time and in the same manner serve a copy of the instrument by which the General Counsel, under section 5(b) of this Guide, has designated him or her to act as commissioner.

(f) At least 7 days before the foreclosure sale, the commissioner will record both the instrument designating him or her to act as commissioner and the Notice of Default and Foreclosure Sale in the same office or offices in which the mortgage was recorded.

7. Conditions of Foreclosure Sale

(a) If a majority of the residential units in a property subject to foreclosure sale pursuant to the Act are occupied by residential tenants either on the date of the foreclosure sale or on the date on which the General Counsel designates the foreclosure commissioner, the Secretary shall require, as a condition and term of the sale, that the purchaser at a foreclosure sale (other than the Secretary) agree to continue to operate the project in accordance with the terms of the program under which the mortgage insurance or assistance was provided, or any applicable regulatory or other agreement in effect with respect to such property immediately prior to the time of foreclosure sale as the Secretary shall find appropriate. If a majority of the residential units are not so occupied, at either such time, the Secretary, in his or her discretion, may require as a condition and term of the sale, that the purchaser (other than the Secretary) agree to continue to operate the property in accordance with such terms described above as the Secretary shall find appropriate.

(b) Terms which the Secretary may find appropriate to require pursuant to the Act and such other provisions of law as may be applicable may include provisions relating to use and ownership of the project property, tenant admission standards and procedures, rent schedules and increases, and project operation and maintenance. In determining terms which may be appropriate to require, the Secretary shall consider:

(1) The history of the project, including the purposes of the program under which the mortgage insurance or assistance was provided, and any other program of HUD under which the project was developed or otherwise assisted and the probable causes of project failure resulting in its default;

(2) A financial analysis of the project, including an appraisal of the fair market value of the property for its highest and best use;

(3) A physical analysis of the project, including the condition of the structure and

grounds, the need for rehabilitation or repairs, and the estimated costs of any such rehabilitation or repairs;

(4) The income levels of the occupants of the project;

(5) Characteristics, including rental levels, of comparable housing in the area, with particular reference to whether current conditions and discernible trends in the area fairly indicate a likelihood that, for the foreseeable future after foreclosure and sale, the project will continue to provide rental or cooperative housing and market rentals obtainable in the project will be affordable by low- or moderate-income persons;

(6) The availability of or need for rental housing for low- and moderate-income persons in the area, including actions being taken or projected to be taken to address such needs and the impact of such actions on the project;

(7) An assessment of the number of occupants who might be displaced as a result of the manner of disposition;

(8) The eligibility of the occupants of the property for rental assistance under any program administered by HUD and the availability of funding for such assistance if necessary in order that the units occupied by such occupants will remain available to and affordable by such persons, or if necessary in order to assure the financial feasibility of the project after foreclosure and sale subject to the terms to be required by the Secretary; and

(9) Such other factors relating to the project as the Secretary shall consider appropriate.

(c) Terms which the Secretary may require to be agreed to by the purchaser pursuant to the Act shall generally not be more restrictive, or binding for a longer duration, than the terms by which the mortgagor was bound prior to the foreclosure. For example:

(1) If the mortgage being foreclosed was previously insured by the Secretary under section 608, or 801, or title II or X of the National Housing Act; or assisted under section 202 of the Housing Act of 1959, as it existed before its amendment by section 801 of the Cranston-Gonzalez National Affordable Housing Act, any terms required by the Secretary pursuant to the Act shall be in effect no longer than the earliest date on which the mortgagor could have prepaid the mortgage debt without the Secretary's consent, or the maturity date of the mortgage, whichever is earlier. No terms shall be required pursuant to the Act if, under the terms of the mortgage, the mortgagor could have prepaid the mortgage debt in full without the Secretary's consent on or before the date of the foreclosure sale.

(2) If the mortgage being foreclosed was taken by the Secretary in conjunction with the previous sale of the project by the Secretary (purchase money mortgage), any terms required by the Secretary pursuant to the Act shall be in effect no longer than the earliest date on which the mortgagor under the Purchase Money Mortgage could have prepaid the mortgage debt in full without the Secretary's consent, or the maturity date of the mortgage, whichever is earlier. No terms shall be required pursuant to the Act if the mortgagor could have prepaid the mortgage debt in full without the Secretary's consent on or before the date of the foreclosure sale.

(3) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 1(d)(1) of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1715z-1a); section 202 of the Housing Act of 1959, as amended by section 801 of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q); section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or section 225(b) of the Emergency Low Income Housing Preservation Act of 1987 (12 U.S.C. 17151), any terms required by the Secretary under the Act shall be in effect no longer than the maturity date of the mortgage.

(4) If the mortgage being foreclosed was held by the Secretary under section 312 of the Housing Act of 1964, any terms required by the Secretary pursuant to the Act shall be in effect no longer than five years after the completion of the rehabilitation work funded by the section 312 loan. No terms shall be required pursuant to the Act if the foreclosure sale occurs more than five years after the completion of such rehabilitation work.

(5) If the mortgage being foreclosed covers a project which is governed by a use agreement executed under section 222(b) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4112), any terms required by the Secretary under the Act shall be in effect for the remaining useful life of the project. Remaining useful life has the same meaning given the term in § 24 CFR 248.101.

(d) The limitations contained in paragraph (c) of this section apply only to such terms as the Secretary may require the purchaser to agree to, as a condition and term of the sale, under paragraph (a) of this section. Nothing contained in paragraph (c) of this section shall prevent the Secretary and the purchaser from entering into a subsidy agreement under any program administered by the Secretary containing terms binding upon either party which are longer in duration than would be permitted to be required by paragraph (c) of this section.

(e) Any terms required by the Secretary to be agreed to by the purchaser as a condition and term of sale under the Act shall be embodied in a use agreement to be executed by the Secretary and the purchaser. Such terms also may be included, or referred to, in appropriate covenants contained in the deed to be delivered by the foreclosure commissioner as described in section 12 of this Guide. Terms required by the Secretary shall be stated or described in the Notice of Default and Foreclosure Sale served, published and posted in accordance with section 6 of this Guide.

8. Termination or Adjournment of Foreclosure Sale

(a) Except as provided in paragraphs (d), (e), and (f) of this section, the commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary so directs the commissioner; or

(2) The commissioner finds, upon application of the mortgagor at least three

business days prior to the scheduled sale, that the default or defaults upon which the foreclosure is based did not exist when the Notice of Default and Foreclosure Sale was served; or

(3) (i) In the case of a monetary default, the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated is tendered to the commissioner before the public auction is completed, and the commissioner finds that there are no nonmonetary defaults;

(ii) In the case of a nonmonetary default, the commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that all nonmonetary defaults have been cured and that there are no monetary defaults; and

(iii) There is tendered to the commissioner before public auction is completed, all amounts due under the mortgage agreement excluding additional amounts which would have been due if mortgage payments had been accelerated, all expenditures secured by the mortgage, and all foreclosure costs incurred for which payment from foreclosure proceeds is authorized, as described in section 10 of this Guide.

(b) Before withdrawing the security property from foreclosure as described in paragraph (a) (2) or (3) of this section, the commissioner shall notify the Secretary of the proposed withdrawal by telephone or telegram and shall 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 10 days within which to demonstrate orally or in writing why the security property should not be withdrawn from foreclosure. The Secretary shall provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the commissioner. If the Secretary receives the commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale shall automatically be postponed for 14 days. Under these circumstances, notice of the rescheduled sale shall be served as described in paragraph (d) of this section.

(c) The commissioner may not withdraw the security property from foreclosure as described in paragraph (a)(3) of this section more than once unless the Secretary consents in writing to such withdrawal.

(d) Before or at the time of sale, the foreclosure commissioner may, in his or her discretion, determine that circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary, or that additional time is necessary to determine if the sale should be terminated as described in paragraph (a) (2) or (3) of this section. If the commissioner makes such a determination, he or she may adjourn the foreclosure to a later time on the scheduled sale date or to a date not less than nine nor more than 24 days later than the scheduled sale date. If the sale is adjourned to a later hour on the scheduled sale date, no additional notice of the sale is required. If the sale is adjourned to a later

date, a revised Notice of Default and Foreclosure Sale reciting that the sale has been adjourned to a specific new date and containing any other corrections the commissioner deems appropriate shall be served in accordance with the provisions of section 6.(c) of this Guide, except that publication under section 6(c)(4) may be made on any of three separate days prior to the revised date of foreclosure sale so long as the first publication is made at least seven days before the revised sale date, and mailing under section 6(c) (1) through (3) may be made at any time at least seven days before the date to which the foreclosure sale has been adjourned. The commissioner shall also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(e) If the General Counsel designates a substitute commissioner less than 48 hours before the foreclosure sale, the sale shall be terminated and a new foreclosure commenced by serving a new Notice of Default and Foreclosure Sale, in accordance with section 6.(c) of this Guide.

(f) If the General Counsel designates a substitute commissioner 48 hours or more before the foreclosure sale, the foreclosure will continue without prejudice unless the substitute commissioner in his or her sole discretion finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel the sale or adjourn it according to the provisions of paragraph (d) of this section.

(g) If the commissioner cancels the foreclosure, the mortgage will continue in effect as if the mortgage debt had not been accelerated.

(h) If the commissioner cancels the foreclosure sale, a new foreclosure may be subsequently commenced as provided under the Act.

(i) If upon application by the mortgagor, the commissioner refuses to withdraw the property from foreclosure as described in paragraphs (a)(2) and (a)(3)(ii) of this section, the commissioner shall provide the mortgagor and the Secretary with a written statement of the reasons for the refusal.

9. Conduct of the Sale

(a) The foreclosure commissioner shall conduct the foreclosure sale at public auction in a manner fair to both the mortgagor and the Secretary and consistent with the provisions of the Act. The commissioner shall attend the foreclosure sale in person or, if the Commissioner is not a natural person, through a duly authorized employee. If more than one commissioner has been designated, at least one shall attend the sale. The commissioner shall accept written one-price sealed bids from any party including the Secretary so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale which are contained in section 6.(b)(12) of this Guide. The commissioner shall announce the name of each such bidder and the amount of the bid. The commissioner shall accept oral bids

from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements described in the Notice of Default and Foreclosure Sale which are contained in section 6.(b)(12) of this Guide. The commissioner will announce the amount of the high bid and the name of the successful bidder before the close of the sale.

(b) Notwithstanding the provisions of paragraph (a) of this section, neither the commissioner nor any relative, related business entity or employee shall be permitted to bid at the foreclosure sale. Relatives of the commissioner who may not bid include parents, siblings, spouses and children. Related business entities which may not bid include entities or concerns whose relationship with the commissioner at the time the commissioner is designated is such that, directly or indirectly, one concern or individual formulates, directs, or controls the other concern; or has the power to formulate, direct, or control the other concern; or has the responsibility and authority either to prevent in the first instance, or promptly to correct, the offensive conduct of the other concern. Business concerns are also affiliates of each other when a third party is similarly situated with respect to both concerns.

(c) If a natural person, the commissioner may serve as auctioneer or, in the commissioner's discretion, may employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate any such auctioneer from the proceeds of the fee he or she collects as described in section 10(e) of this Guide.

10. Foreclosure Costs

Before any claim may be satisfied from the sale proceeds, those proceeds shall be used to pay the following costs:

(a) Advertising and postage expenses incurred in serving the Notice of Default and Foreclosure Sale under section 6.(c) (1) through (4) of this Guide;

(b) Mileage by the most reasonable road distance for posting the Notice of Default and Foreclosure Sale under section 6.(c)(5) of this Guide and for the foreclosure commissioner's attendance at the sale. The mileage shall be paid at a rate provided in 28 U.S.C. 1921;

(c) Reasonable and necessary costs incurred for title and lien record searches;

(d) The necessary out-of-pocket costs incurred by the commissioner for recording documents; and

(e) A commission to the foreclosure commissioner for the conduct of the foreclosure in an amount to be determined by the General Counsel. A commission may be allowed to the commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

11. Disposition of Sale Proceeds

(a) The proceeds of the foreclosure sale shall be used in the following order:

(1) To pay the costs listed in section 10 of this Guide;

(2) To pay valid tax liens or assessments on the security property which have priority over the foreclosed mortgage;

(3) To pay liens recorded prior to the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale;

(4) To pay service charges and advancements for taxes, assessments and property insurance premiums which were made under the terms of the foreclosed mortgage;

(5) To pay the interest due under the mortgage debt;

(6) To pay the unpaid principal 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 in the mortgage agreement);

(7) To pay any late charges;

(8) To pay any liens recorded after the foreclosed mortgage; and

(9) To pay the surplus to the mortgagor.

(b) The priority of the Secretary's lien shall be determined by the Federal first-in-time first-in-right rule. State laws affording priority to liens recorded after the mortgage are preempted.

(c) If the mortgagor entitled to the surplus cannot be located, or if the surplus available is insufficient to pay all claimants and the claimants to the surplus cannot agree on its disposition, or if a claimant to the proceeds of the sale disagrees with the commissioner's proposed disposition of the proceeds, the commissioner may deposit the disputed funds with a legally authorized official or court. If such 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 in taking or defending such action shall be deductible from the disputed funds.

(d) If there is more than one party holding a lien or assessment described in paragraph (a) (2), (3) or (8) of this section, the claim of each party holding the same kind of lien or assessment will be given the relative priority to which it would be entitled under the law of the State in which the security property is located.

(e) The commissioner will keep such records as will permit the Secretary to verify the costs claimed under section 10 of this Guide, and otherwise to audit the commissioner's disposition of the sale proceeds.

12. Transfer of Title and Possession

(a) If the Secretary is the successful bidder, the foreclosure commissioner shall issue a deed to the Secretary upon receipt of the amount needed to pay the costs listed in section 11.(a) (1) through (3) of this Guide. If the Secretary is not the successful bidder, the foreclosure commissioner shall issue a deed to the purchaser upon receipt of the entire purchase price and execution by the Secretary and the purchaser of any use agreement referred to in section 7(e) of this

Guide. The deed shall convey all of the Secretary's rights, title and interest in the security property as well as the rights of the commissioner, the mortgagor, and any other person claiming by, through, or under them. Any required covenants reflecting terms described in section 7 of this Guide shall be contained in the commissioner's deed. No judicial proceeding shall be required ancillary or supplementary to the procedures provided in this part to assure the validity of the conveyance or confirmation of such conveyance.

(b) The commissioner shall deliver possession of the security property to the purchaser at the same time he or she delivers the deed. The purchaser's possession of the security property shall be subject to any interests senior to that of the mortgage and to the terms of any existing residential lease for the remaining term of the lease or for one year, whichever is shorter. Subject to any required terms described in section 7 of this Guide, any commercial tenant and any residential tenant remaining in possession after the expiration of his or her lease or after the passage of one year, whichever event occurs first, shall be deemed a tenant at sufferance and may be evicted in accordance with applicable State or local law.

(c) When the commissioner conveys the property to the Secretary, no tax shall be imposed or collected with respect to the commissioner's deed, whether as a tax upon the instrument itself or upon the privilege of conveying or transferring title to the property.

(d) The registrar of deeds or other appropriate official in the county where the property is located shall, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the commissioner for recordation. The instruments to be accepted shall include, but not be limited to, the commissioner's deed and the commissioner's affidavit, both of which are described in section 14 of this Guide.

(e) Failure to collect or pay a tax described in paragraph (c) of this section shall not be grounds for refusing to record the commissioner's deed, for failing to recognize such recordation or for denying enforcement of the deed in any State or Federal court.

13. Redemption Rights

The mortgagor or others will have no right to redeem the mortgage after the foreclosure sale. The mortgagor or others will have no right to possession of the security property after the foreclosure sale based on a right of redemption.

14. Record of Foreclosure and Sale

(a) The deed to the purchaser shall contain the following recitals:

(1) A statement that the foreclosed mortgage was held by the Secretary;

(2) The details of the service of the Notice of Default and Foreclosure Sale described in section 6(c) of this Guide, including the names and addresses of persons to whom the Notice was mailed and the dates on which the Notice was mailed, names of newspapers in which and dates on which the Notice was published, and the date on which service by posting was accomplished;

(3) A statement that the foreclosure was conducted in accordance with the Act and with the terms of the Notice of Default and Foreclosure Sale;

(4) The costs of the foreclosure as described in section 10 of this Guide; and

(5) The name of the successful bidder and the amount of the successful bid.

(b) The commissioner may, in his or her discretion, make these recitations in an affidavit or addendum to the deed rather than in the body of the deed.

15. Management and Disposition by the Secretary

When the Secretary is the purchaser of the security property, the Secretary shall manage and dispose of it in accordance with section § 203 of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1701z-11, and in accordance with 24 CFR part 290.

16. Computation of Time

Periods of time provided for in this Guide shall be calculated in consecutive calendar days including the day or days on which the actions or events occur or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

Appendix B: Nonjudicial Foreclosure of Single Family Mortgages—Guide

Sec.

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1. Purpose

The purpose of this guide is to present, in a single document, the statutory and regulatory requirements of the Single Family Mortgage Foreclosure Act of 1994 (the Statute), 12 U.S.C. §§ 3751-3768. Although it presents the regulatory and statutory requirements in a combined format, this guide is a secondary source for these requirements. The Code of Federal Regulations (CFR), at 24 CFR part 27, subpart B, is the primary, governing source for regulatory requirements, and the Statute is the primary, governing source for statutory requirements. Any reference in this Guide to the provisions of the Statute includes the requirements of 24 CFR part 27, subpart B.

The Statute creates a uniform Federal remedy for foreclosure of certain single family mortgages which are held by the

Secretary of Housing and Urban Development pursuant to Title I of the National Housing Act, 12 U.S.C. 1702 *et seq.*, Title II of the National Housing Act, 12 U.S.C. 1707 *et seq.*, or Section 312 of the Housing Act of 1964, 42 U.S.C. 1452b (as it existed before repeal). The Secretary's powers under the Statute to appoint a foreclosure commissioner or commissioners and substitute commissioners, and to fix the compensation of commissioners have been delegated to the HUD General Counsel.

The availability of uniform and more expeditious procedures, with no right of redemption in the mortgagor or others, for the foreclosure of these mortgages by the Department, will ameliorate the negative consequences of the disparate State laws under which mortgages covering one- to four-family residential properties are foreclosed on behalf of HUD. The long periods of time that are required under State law to complete foreclosure of such mortgages lead to deterioration in the condition of the properties involved, necessitate substantial Federal holding expenditures, increase the risk of vandalism, fire loss, depreciation, damage, and waste with respect to the properties, and adversely affect the neighborhoods in which the properties are located. These consequences seriously impair the ability of HUD to protect Federal financial interests in the properties and frustrate attaining the objectives of the underlying Federal program authority. Use of this nonjudicial foreclosure procedure will also reduce unnecessary litigation, which contributes to already overcrowded court calendars, by removing many foreclosures from the courts.

2. Scope and Applicability

(a) Scope. Under the Statute, HUD may foreclose on any defaulted single family mortgage (as defined in section 3, below) encumbering real estate in any State regardless of when the mortgage was executed.

(b) Applicability. HUD, at its discretion, may 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.

3. Definitions

As used in this guide—

Statute means the Single Family Mortgage Foreclosure Act of 1994.

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.

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 means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any property (real or mixed real and personal), or any interest in property (including leaseholds, 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.

Mortgage agreement means the note or debt instrument and the mortgage instrument, deed of trust instrument, trust deed, or any other similar instrument or instruments creating the security interest in the real estate for the repayment of the note or debt instrument, including any instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

Mortgagor means the debtor, obligor, grantor, or trustor 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.

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

Person includes any individual, group of individuals, association, partnership, corporation, or organization.

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

Single family mortgage means a mortgage that covers property on which there is located a 1- to 4- family residence, and that:

(1) Is held by the Secretary pursuant to title I or title II of the National Housing Act (12 U.S.C. 1701 *et seq.*); or

(2) Secures a loan obligated by the Secretary under section 312 of the Housing Act of 1964 as it existed before the repeal of that section by section 289 of the Cranston-Gonzalez National Affordable Housing Act. A mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling is not subject to foreclosure under the Statute.

State means:

- (1) The several States;
- (2) The District of Columbia;
- (3) The Commonwealth of Puerto Rico;
- (4) The United States Virgin Islands;
- (5) Guam;
- (6) American Samoa;
- (7) The Northern Mariana Islands; and
- (8) Indian tribes, meaning any Tribe, band, group or nation, including Alaskan Indians,

Aleuts, and Eskimos, and any Alaskan Native Village of the United States that is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or was considered an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221) before repeal of that Act. Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

4. Designation of Foreclosure Commissioner

(a) The Secretary may designate a person or persons to serve as a foreclosure commissioner for the purpose of foreclosing single family mortgages, and such a foreclosure commissioner has a nonjudicial power of sale as provided under the Statute.

(b) The foreclosure commissioner, if a natural person, must 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 determined by the Secretary to be responsible, financially sound, and competent to conduct a foreclosure. The method of selection and determination of the qualifications of the foreclosure commissioner are at the discretion of the Secretary, and the execution of a designation pursuant to the Statute is conclusive evidence that the commissioner selected has been determined to be qualified by the Secretary.

(c) The Secretary designates a foreclosure commissioner by executing a written designation stating the name and business or residential address of the commissioner, except that if a person is designated in his or her capacity as an official or employee of a government or corporate entity, such a person may be designated by his or her unique title or position instead of by name. The designation is effective upon execution.

(d) The Secretary may designate, with or without cause, a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by the procedure contained in paragraph (c) of this section, above.

(1) A substitution of the foreclosure commissioner may be made at any time prior to the time of the foreclosure sale, and the foreclosure shall continue without prejudice, unless the substitute commissioner, in that commissioner's sole discretion, finds that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding must be in writing. If the substitute commissioner makes such a finding, the substitute commissioner will cancel the foreclosure sale, or adjourn the sale as explained in section 11, below.

(2) If a substitute commissioner is designated, a copy of the written notice of the designation referred to in paragraph (c) of this section must be served:

(i) By mail, as described in section 8, below (except that the minimum time periods between mailing and the date of the foreclosure sale do not apply); or

(ii) In any other manner which, in the substitute foreclosure commissioner's sole discretion, is conducive to achieving timely notice of such substitution.

5. Prerequisites to Foreclosure

(a) The Secretary may commence foreclosure of a single family mortgage under the Statute upon the breach of a covenant or condition in the mortgage agreement.

(b) No foreclosure under the Statute may be commenced unless any previously pending judicial or nonjudicial proceeding that has been separately instituted by the Secretary to foreclose the mortgage in a manner other than under the Statute has been withdrawn, dismissed, or otherwise terminated.

(c) The Secretary will not institute any separate foreclosure proceeding concerning a property while it is the subject of a foreclosure pursuant to the Statute.

(d) The Statute does not preclude the Secretary from enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment, or foreclosing under the Statute if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement.

6. Commencement of Foreclosure

If the Secretary determines that the prerequisites to foreclosure set forth in section 5 are satisfied, the Secretary may direct the foreclosure commissioner to commence foreclosure of the mortgage. Upon such request, the foreclosure commissioner will commence foreclosure of the mortgage in accordance with section 7, below.

7. Notice of Default and Foreclosure Sale

The commissioner commences the foreclosure by serving a Notice of Default and Foreclosure Sale. The Notice sets forth the name, address and telephone number of the foreclosure commissioner and the date on which the Notice was issued, along with the following information:

(a) The current mortgagee (that is, the Secretary), the original mortgagee (if other than the Secretary), and the original mortgagor.

(b) A description of the security property sufficient to identify the property to be sold.

(c) The date of the mortgage, the date the mortgage was recorded, the office in which the mortgage is recorded, and the liber and folio numbers or other appropriate description of the location of recordation of the mortgage.

(d) 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.

(e) The date, time, and location of the foreclosure sale.

(f) A statement that the foreclosure is being conducted in accordance with the Statute.

(g) A description of the types of costs, if any, to be paid by the purchaser upon transfer of title.

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

(i) Any other appropriate terms of sale or information as the Secretary may determine.

8. Service of Notice of Default and Foreclosure Sale

The foreclosure commissioner will serve the Notice of Default and Foreclosure Sale upon the following persons and in the following manner, and no additional notice will be required to be served, notwithstanding any notice requirements of any State or local law:

(a) Filing the notice. The Notice of Default and Foreclosure Sale must be filed not less than 21 days before the date of the foreclosure sale in the manner authorized for filing a notice of an action concerning real property according to the law of the State in which the security property is located, or if none, in the manner authorized by Section 3201 of title 28, United States Code.

(b) Notice by mail.

(1) The Notice must be sent by certified or registered mail, postage prepaid, return receipt requested, to the following (except that 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):

(i) The current security property owner of record, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute. The Notice must be mailed not less than 21 days before the date of the foreclosure sale to the current owner at the last address known to the Secretary or the foreclosure commissioner or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of the current owner.

(ii) The original mortgagor and all subsequent mortgagors of record or other persons who appear on the basis of the record to be liable for part or all of the mortgage debt, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute, except that the Notice need not be mailed to any mortgagors who have been released from all obligations under the mortgage. Notice under this subsection must be mailed not less than 21 days before the date of the foreclosure sale to the last known address of the mortgagors or, if none, to the address of the security property, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such mortgagors.

(iii) All dwelling units in the security property, whether or not the Notice describes a sale adjourned as provided in this part. Notice under this subsection shall be mailed not less than 21 days before the date of the foreclosure sale. If the names of the occupants of the security property are not known to the Secretary, or if the security property has more than one dwelling, the Notice must be posted at the security property not less than 21 days before the foreclosure sale.

(iv) All persons holding liens of record upon the security property, as the record existed 45 days before the date originally set for the foreclosure sale, whether or not the notice describes a sale adjourned as provided in the Statute. Notice under this subsection must be mailed not less than 21 days before the date of the foreclosure sale to each such lienholder's address of record, or, at the discretion of the foreclosure commissioner, to any other address believed to be that of such lienholder.

(2) Notice by mail is deemed duly given upon mailing, whether or not received by the addressee and whether or not a return receipt is received or the notice is returned. The date of the receipt for the postage paid for the mailing may serve as proof of the date of mailing of the notice.

(c) Publication.

(1) A copy of the Notice of Default and Foreclosure Sale must be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication must be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. A legal newspaper that is accepted as a newspaper of legal record in the county or counties in which the security property being sold is located is a newspaper having general circulation for the purposes of this paragraph.

(2) If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale must be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

9. Presale Reinstatement

(a) Except as provided in paragraph (d) of section 4 (above), paragraph (b) of this section, and section 11 (below), the foreclosure commissioner will withdraw the security property from foreclosure and cancel the foreclosure sale only if:

(1) The Secretary directs the foreclosure commissioner to do so before or at the time of the sale; or

(2) The foreclosure commissioner finds, upon application of the mortgagor not less than three business days before the date of the sale, that the default or defaults upon which the foreclosure is based did not exist at the time of service of the Notice of Default and Foreclosure Sale; or

(3) In the case of a foreclosure involving a monetary default, there is tendered to the

foreclosure commissioner before public auction is completed all amounts that would be due under the mortgage agreement if payments under the mortgage had not been accelerated, all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 13 (below), and the foreclosure commissioner finds 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 or otherwise, to be canceled by curing a default; or

(4) In the case of a foreclosure involving a nonmonetary default:

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

(ii) There is 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.

(b) Before withdrawing the security property from foreclosure under subparagraphs (a)(2), (a)(3), or (a)(4) of this section, the foreclosure commissioner must notify the Secretary of the proposed withdrawal by telephone or other telecommunication device and must 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 has 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 will not be withdrawn from foreclosure. The Secretary will provide the mortgagor with a copy of any statement prepared by the Secretary in opposition to the proposed withdrawal at the same time the statement is submitted to the foreclosure commissioner. If the Secretary receives the foreclosure commissioner's written statement less than 10 days before the scheduled foreclosure sale, the sale will automatically be adjourned for 14 days, during which time it may also be cancelled. Under these circumstances, notice of the rescheduled sale, if any, will be served as described in section 11(c), below.

(c) If the foreclosure commissioner cancels the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

(d) Cancellation of a foreclosure sale will have no effect on the commencement of a subsequent foreclosure proceeding.

(e) The foreclosure commissioner must file a notice of cancellation in the same place and manner provided for filing the Notice of

Default and Foreclosure Sale as provided in section 8.

10. Conduct of Sale

(a) The foreclosure sale will be conducted in a manner and at a time and place as identified in the Notice of Foreclosure and Sale and more fully described in this section. The sale will be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in section 7(d), above, or the earliest occurrence of a nonmonetary default. The sale will be held at public auction and must be scheduled to begin at a time between the hours of 9:00 a.m. and 4:00 p.m. local time. The sale will be scheduled for 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. If the security property is situated in two counties, the sale may be held in any one of the counties in which any part of the security property is situated.

(b) The foreclosure commissioner will conduct the foreclosure sale in a manner that is fair to both the mortgagor and the Secretary (see section 12, below) and consistent with the provisions of the Statute.

(c) In addition to bids made in person at the sale, the foreclosure commissioner will accept written one-price sealed bids from any party, including the Secretary, for entry by announcement at the sale so long as those bids conform to the requirements described in the Notice of Default and Foreclosure Sale. The foreclosure commissioner will announce the name of each bidder and the amount of the bid. The commissioner will accept oral bids from any party, including parties who submitted one-price sealed bids, if those oral bids conform to the requirements in the Notice of Default and Foreclosure Sale. Before the close of the sale, the commissioner will announce the amount of the high bid and the name of the successful bidder.

(d) Notwithstanding the provisions of paragraph (d) of this section, neither the foreclosure commissioner nor any relative, related business entity, or employee is permitted to bid in any manner on the security property subject to the 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. Relatives of the foreclosure commissioner who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time the foreclosure commissioner is designated and during the term of service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, the offensive conduct of the other entity.

(e) The commissioner may serve as an auctioneer, or the commissioner may employ an auctioneer to conduct the sale. If the commissioner employs an auctioneer to

conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. The commissioner will compensate an auctioneer from the proceeds of the commission described in section 13(e), below.

(f) The foreclosure commissioner may require a bidder to make a deposit in an amount or percentage set by the foreclosure commissioner and stated in the Notice of Default and Foreclosure Sale before the bid is accepted.

(g) 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, will be liable to the Secretary for any costs incurred as a result of such failure. If the successful bidder fails to comply with the terms of the sale, the HUD Field Office representative will provide instructions to the commissioner about offering the property to the second highest bidder, or having a new sale, or other instruction at the discretion of the HUD representative.

11. Adjournment or Cancellation of Sale

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

(1) Circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary, or

(2) Additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 9, above.

(b) The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting, at the original place of sale, the new time and place of the foreclosure sale, which must be held between 9:00 a.m. and 4:00 p.m. at the original place of sale.

(c) Except as provided in paragraph (b) of this section, the foreclosure commissioner may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case the foreclosure commissioner must serve a Notice of Default and Foreclosure Sale that is revised to state that the foreclosure sale has been adjourned to a specified date between the hours of 9:00 a.m. and 4:00 p.m. The revised Notice may include any other information the foreclosure commissioner deems appropriate. Such Notice must be served by publication and mailing as provided in section 8, above, except that publication may be made on any of three separate days before the revised date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held. The

commissioner must also, in the case of a sale adjourned to a later date, mail a copy of the revised Notice of Default and Foreclosure Sale to the Secretary at least seven days before the date to which the sale has been adjourned.

(d) When a substitute commissioner is designated by the Secretary to replace a previously designated foreclosure commissioner, the sale shall continue without prejudice unless the substitute commissioner finds, in that commissioner's sole discretion, that continuation of the foreclosure sale will unfairly affect the interests of the mortgagor. Any such finding shall be in writing. If the substitute commissioner makes such a finding, the substitute commissioner shall cancel or adjourn the sale.

12. *Validity of Sale*

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

13. *Foreclosure Costs*

The following foreclosure costs are paid from the sale proceeds, or from other available sources if sales proceeds are insufficient, before satisfaction of any other claim to the sale proceeds:

(a) Advertising costs and postage expenses incurred in giving notice described in sections 8 and 11, above.

(b) Mileage by the most reasonable road distance for posting notices described in section 8, above, and for the foreclosure commissioner's or auctioneer's attendance at the sale. The mileage is paid at the rate provided in 28 U.S.C. 1821.

(c) Reasonable and customary costs incurred for title and lien record searches.

(d) The necessary out-of-pocket costs incurred by the foreclosure commissioner for recording documents.

(e) A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure in an amount to be determined by the Secretary. A commission may be allowed to the foreclosure commissioner notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place.

14. *Disposition of Sale Proceeds*

(a) The proceeds of the foreclosure sale are paid out in the following order:

(1) To cover the costs of foreclosure described in section 13, above.

(2) To pay valid tax liens or assessments on the security property as provided in the Notice of Default and Foreclosure Sale.

(3) To pay any liens recorded before the recording of the foreclosed mortgage which are required to be paid in conformity with the Notice of Default and Foreclosure Sale.

(4) To pay service charges and advances for taxes, assessments, and property insurance premiums which were made under the terms of the foreclosed mortgage.

(5) To pay the interest due under the mortgage debt.

(6) To pay the unpaid principal 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 in the mortgage agreement).

(7) To pay any late charges or fees.

(b) Any surplus proceeds from a foreclosure sale will be applied, after payment of the items described in paragraph (a) of this section, in the order as follows:

(1) To pay any liens recorded after the foreclosed mortgage in the order of priority under the law of the State in which the security property is located.

(2) To pay the surplus to the mortgagor.

(c) If the person to whom surplus proceeds are 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 disagrees with the foreclosure commissioner's proposed disposition of the disputed proceeds, the foreclosure commissioner may deposit the disputed funds with a legally authorized official or court. 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 in taking or defending such action are deductible from the disputed funds.

(d) The foreclosure commissioner will keep such records as will permit the Secretary to verify the costs claimed, and otherwise to enable the Secretary to audit the foreclosure commissioner's disposition of the sale proceeds.

15. *Transfer of Title and Possession*

(a) If the Secretary is the successful bidder, the foreclosure commissioner will issue a deed to the Secretary upon receipt of the amount needed to pay the costs of tax liens and prior liens. See sections 14(a)(2) and (a)(3), above.

(b) If the Secretary is not the successful bidder, the foreclosure commissioner will issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale.

(c) The deed or deeds issued by the foreclosure commissioner shall be without warranty or covenants to the purchaser or purchasers. Notwithstanding any State law to the contrary, delivery of a deed by the foreclosure commissioner is a conveyance of the property and constitutes passage of good and marketable title to the mortgaged property. No judicial proceedings are required ancillary or supplementary to the procedures provided under the Statute and its regulations to assure the validity of the conveyance or confirmation of such conveyance. The purchaser of property under the Statute is presumed to be a bona fide purchaser.

(d) A purchaser at a foreclosure sale held pursuant to the Statute is entitled to

possession upon passage of title under paragraph (c) of this section, subject to any interest or interests that are not barred, as described in section 18, below. Any person remaining in possession of the property after the passage of title is deemed a tenant at sufferance subject to eviction under applicable law.

(e) If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, the foreclosure commissioner will execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate will have the same effect as if accomplished during the lifetime of the purchaser.

(f) When the foreclosure commissioner conveys the property to the Secretary, no tax may be imposed or collected with respect to the foreclosure commissioner's deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.

(g) The register of deeds or other appropriate official in the county where the property is located must, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure which are submitted by the foreclosure commissioner for recordation. The instruments to be accepted include, but are not limited to, the foreclosure commissioner's deed. If the foreclosure commissioner elects to include the recitations described in section 17(a), below, in an affidavit or an addendum to the deed as described in section 17(b), below, the affidavit or addendum must be accepted for recordation. Failure to collect or pay a tax as described in paragraph (f) of this section are not grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.

(h) The Clerk of the Court or other appropriate official must cancel all liens as requested by the foreclosure commissioner.

16. *Redemption Rights*

(a) There is no right of redemption, or right of possession based upon a right of redemption, in the mortgagor or others subsequent to a foreclosure completed pursuant to the Statute. In regard to the pre-emption of State laws regarding rights of redemption, a foreclosure is considered completed upon the date and at the time of the foreclosure sale.

(b) Section 204(l) of the National Housing Act, 42 U.S.C. 1710(l), and section 701 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 1452c, do not apply to mortgages foreclosed under the Statute.

17. *Record of Foreclosure and Sale*

(a) The foreclosure commissioner must include in the recitals of the deed to the purchaser, or in an affidavit or addendum to the deed, the following items:

(1) The date, time, and place of the foreclosure sale.

(2) A statement that the foreclosed mortgage was held by the Secretary.

(3) The date of the foreclosed mortgage, the date of the recording of the mortgage that was foreclosed, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.

(4) The details of the service of the Notice of Default and Foreclosure Sale, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed, the name of the newspaper in which the Notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.

(5) The date and place of filing the Notice of Default and Foreclosure Sale.

(6) A statement that the foreclosure was conducted in accordance with the provisions of the Statute and with the terms of the Notice of Default and Foreclosure Sale.

(7) The name of the successful bidder and the amount of the successful bid.

(b) The foreclosure commissioner may, in his or her discretion, make the recitations in paragraph (a) of this section in the deed or in an affidavit or addendum to the deed, either of which is to be recorded with the deed as provided in the Statute.

(c) The items set forth in paragraph (a) of this section are prima facie evidence of the truth of such facts in any Federal or State

court and evidence a conclusive presumption in favor of bona fide purchasers and encumbrancers for value without notice. Encumbrancers for value include liens placed by lenders who provide the purchaser with purchase money in exchange for a security interest in the newly-conveyed property.

18. Effect of Sale

A sale made and conducted as prescribed in the Statute to a bona fide purchaser bars all claims upon, or with respect to, the property sold for the following persons:

(a) Any person to whom the Notice of Default and Foreclosure Sale was mailed as provided under the Statute, and the heir, devisee, executor, administrator, successor or assignee claiming under any such person.

(b) Any person claiming any interest in the property subordinate to that of the mortgage if such person had actual knowledge of the foreclosure sale.

(c) Any person claiming any interest in the property whose assignment, mortgage, or other conveyance was not duly recorded or filed in the proper place for recording or filing, or whose judgment or decree was not duly docketed or filed in the proper place for docketing or filing, before the date on which the notice of the foreclosure sale was first served by publication, as described in section 8(c), above, and the executor, administrator, or assignee of such a person.

(d) Any person claiming an interest in the property under a statutory lien or encumbrance created subsequent to the recording or filing of the mortgage being foreclosed, and attaching to the title or interest of any person designated in any of the foregoing paragraphs.

19. Computation of Time

Periods of time provided for in the Statute are calculated in consecutive calendar days including the day or days on which the actions or events occur, or are to occur. Any such period of time includes the day on which an event occurs or is to occur.

20. Deficiency Judgment

If the price at which the security property is sold at the foreclosure sale is less than the unpaid balance of the debt secured by such property after deducting payments in the order described in section 14, above, the Secretary may refer the matter to the Attorney General who may commence an action or actions against any and all debtors to recover the deficiency, the only limitation on such action being a prohibition against pursuit of a deficiency that is specifically set forth in the mortgage.

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