

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

(6) identification of the failure to make payment, including the due date of the earliest 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;

(7) the date, time, and location of the foreclosure sale;

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

(9) a description of the types of costs, if any, to be paid by the purchaser upon transfer of title;

(10) the amount and method of deposit to be required at the foreclosure sale (except that no deposit shall be required of the Secretary) and the time and method of payment of the balance of the foreclosure purchase price; and

(11) any other appropriate terms of sale or information, as the Secretary may determine.

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

Editorial Notes

CODIFICATION

Section is based on section 808 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3758. Service of notice of foreclosure sale

The foreclosure commissioner shall serve the notice of default and foreclosure sale described in section 3757 of this title upon the following persons and in the following manner, and no additional notice shall be required to be served, notwithstanding any notice requirements of any State or local law:

(1) Timing

Not less than 21 days before the date of the foreclosure sale, the notice of default and foreclosure sale shall be filed 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.

(2) Notice by mail

(A) In general

The notice of foreclosure sale shall be sent by certified or registered mail, postage prepaid and return receipt requested, to the following:

(i) Current owner

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).

(ii) Mortgagors

All 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).

(iii) Dwelling units

All dwelling units in the security property (whether or not the notice describes a sale adjourned).

(iv) Other lienholders

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).

(B) Timing

(i) Notice under clauses (i) and (ii)

Notice under clauses (i) and (ii) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed to the current owner and mortgagor at the last known address of the current owner and mortgagor, 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 current owner and mortgagor.

(ii) Notice under clause (iii)

Notice under clause (iii) of subparagraph (A) 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 the security property has more than 1 dwelling, the notice shall be posted at the security property not less than 21 days before the foreclosure sale.

(iii) Notice under clause (iv)

Notice under clause (iv) of subparagraph (A) shall be mailed not less than 21 days before the date of the foreclosure sale, and shall be mailed 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.

(C) Effectiveness of notice

Notice by mail pursuant to this section or section 3756(c) of this title shall be 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.

(3) Publication

(A) In general

A copy of the notice of default and foreclosure sale shall be published once a week during 3 successive calendar weeks before the date of the foreclosure sale. Such publication shall be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. To the extent practicable, the newspaper or newspapers chosen shall be a newspaper or newspapers having

circulation conducive to achieving notice of foreclosure by publication. 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 shall be considered a newspaper having general circulation for the purposes of this paragraph.

(B) Exception

If there is no newspaper published at least weekly which has a general circulation in one of the counties in which the security property being sold is located, copies of the notice of default and foreclosure sale shall be posted not less than 21 days before the date of the foreclosure sale—

- (i) at the courthouse of any county or counties in which the security property is located; and
- (ii) at the place where the sale is to be held.

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

Editorial Notes

CODIFICATION

Section is based on section 809 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3759. Presale reinstatement

(a) Withdrawal and cancellation

(1) In general

Except as provided in sections 3756(b) and 3760(c) of this title, the foreclosure commissioner shall withdraw the security property from foreclosure and cancel the foreclosure sale only if—

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

(B) the foreclosure commissioner finds, upon application of the mortgagor not less than 3 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

(C)(i) in the case of a foreclosure involving a monetary default, there is tendered to the foreclosure commissioner before public auction is completed the entire amount of principal and interest which would be due if payments under the mortgage had not been accelerated;

(ii) in the case of a foreclosure involving a nonmonetary default, the foreclosure commissioner, upon application of the mortgagor before the date of foreclosure sale, finds that such default is cured; and

(iii) there is tendered to the foreclosure commissioner before public auction is completed—

(I) all amounts due under the mortgage agreement (excluding additional amounts which would have been due if mortgage payments had been accelerated);

(II) all amounts of expenditures secured by the mortgage; and

(III) all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in section 3761 of this title.

(2) Discretionary noncancellation

The Secretary may refuse to cancel a foreclosure sale pursuant to paragraph (1)(C) if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to this chapter or otherwise, to be canceled by curing a default.

(b) Opportunity of Secretary to dispute withdrawal

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

(c) Effect of cancellation

(1) Mortgage unaffected

In any case in which a foreclosure commenced under this chapter is canceled, the mortgage shall continue in effect as though acceleration had not occurred.

(2) Commencement of new foreclosure sale

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

(d) Notice of cancellation

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

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

Editorial Notes

CODIFICATION

Section is based on section 810 of title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which was enacted into law by Pub. L. 103-327.

§ 3760. Conduct of sale; adjournment

(a) In general

(1) Manner and time

A foreclosure sale pursuant to this chapter shall be held at public auction and shall be scheduled to begin between the hours of 9 o'clock ante meridian and 4 o'clock post meridian local time.

(2) Location

The foreclosure sale shall be held at a location specified in the notice of default and foreclosure sale and such location shall be at a place where foreclosure real estate auctions are customarily held in the county or counties in which the property to be sold is located, or at a courthouse therein, or at or on the property to be sold. Sale of security property situated in two or more counties may be held in any 1 of the counties in which any part of the security property is situated.