

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.