

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.

(3) Sale of multiple properties

The foreclosure commissioner may designate the order in which multiple security properties are sold.

(b) Duties of foreclosure commissioner**(1) Conduct of sale****(A) In general**

The foreclosure commissioner shall conduct the foreclosure sale in accordance with the provisions of this chapter and in a manner fair to both the mortgagor and the Secretary.

(B) Written bids

Written one-price sealed bids shall be accepted by the foreclosure commissioner from the Secretary and other persons for entry by announcement by the foreclosure commissioner at the sale.

(C) Auctioneer

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) of this title.

(2) Eligible participants**(A) In general**

The Secretary, and any other person who has submitted a written one-price bid, may bid at the foreclosure sale.

(B) Prohibited participants

The foreclosure commissioner or any relative, related business entity, or employee of the foreclosure commissioner or a related business entity shall not be permitted to bid in any manner on the security property subject to 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.

(c) Adjournment or cancellation of sale**(1) General authority**

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

(A) circumstances are not conducive to a sale which is fair to the mortgagor and the Secretary; or

(B) additional time is necessary to determine whether the security property should be withdrawn from foreclosure, as provided in section 3759 of this title.

(2) Adjournment to same or later day

The foreclosure commissioner may adjourn a foreclosure sale to a later hour the same day by announcing or posting the new time and place of the foreclosure sale, or may adjourn the foreclosure sale for not less than 9 and not more than 31 days, in which case the commissioner shall serve a notice of default and foreclosure sale revised to recite the fact that the foreclosure sale has been adjourned to a specified date, as well as any other information the foreclosure commissioner deems appropriate.

Such notice shall be served by publication and mailing in accordance with section 3758 of this title, except that publication may be made on any of 3 separate days before the revised date of foreclosure sale, and mailing may be made at any time not less than 7 days before the date to which the foreclosure sale has been adjourned.

(d) Cash deposits

The foreclosure commissioner may require a bidder to make a cash deposit in an amount or percentage set by the foreclosure commissioner and stated in the notice of foreclosure sale before the bid is accepted. 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, shall be liable to the Secretary for any costs incurred as a result of such failure.

(e) Presumption of validity of sale

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

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

Editorial Notes**CODIFICATION**

Section is based on section 811 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.

§ 3761. Foreclosure costs

The following foreclosure costs shall be paid from the sale proceeds before satisfaction of any other claim to such sale proceeds:

(1) Advertising and postage

Necessary advertising costs and postage incurred in giving notice pursuant to sections 3758 and 3760 of this title.

(2) Mileage

Mileage (determined by the most reasonable road distance) for posting notices and for the foreclosure commissioner's or auctioneer's attendance at the sale, as provided in section 1821 of title 28.

(3) Title and lien search

Reasonable and necessary costs incurred in connection with any search of title and lien records.

(4) Recordation fees

Costs incurred to record documents.

(5) Commission

A commission for the foreclosure commissioner (if the foreclosure commissioner is not an employee of the United States) for the conduct of the foreclosure, to the extent such a commission is authorized by the Secretary.

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