

Editorial Notes

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (b)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 1452b of title 42, referred to in subsec. (b)(2), was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

CODIFICATION

Section is based on section 802 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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 103-327, title II, Sept. 28, 1994, 108 Stat. 2316, provided in part that title VIII of S. 2281, One Hundred Third Congress, as reported July 13, 1994, which is classified to this chapter, is incorporated into Pub. L. 103-327 and deemed enacted into law upon enactment of Pub. L. 103-327, which was approved Sept. 28, 1994.

SHORT TITLE

Section 801 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, title II [title VIII, §801], Sept. 28, 1994, 108 Stat. 2316, provided in part, that: "This title [enacting this chapter] may be cited as the 'Single Family Mortgage Foreclosure Act of 1994'."

§ 3752. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Bona fide purchaser

The term "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.

(2) County

The term "county" has the same meaning as in section 2 of title 1.

(3) Mortgage

The term "mortgage" means a deed of trust, mortgage, deed to secure debt, security agreement, or any other form of instrument under which any 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.

(4) Mortgage agreement

The term "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 instrument incorporated by reference therein and any instrument or agreement amending or modifying any of the foregoing.

(5) Mortgagor

The term "mortgagor" means the obligor, grantor, or trustee 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.

(6) Owner

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

(7) Person

The term "person" includes any individual, group of individuals, association, partnership, corporation, or organization.

(8) Record; recorded

The terms "record" and "recorded" include "register" and "registered" in the instance of registered land.

(9) Security property

The term "security property" means the property (real, personal or mixed) or an interest in property (including leaseholds, life estates, reversionary interests, 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.

(10) Single family mortgage

The term "single family mortgage" means a mortgage that covers property on which there is located a 1- to 4-family residence, and that—

(A) is held by the Secretary pursuant to title I or title II of the National Housing Act [12 U.S.C. 1702 et seq., 1707 et seq.]; or

(B) secures a loan obligated by the Secretary under section 1452b of title 42, as it existed before the repeal of that section by section 12839 of title 42 (except that a mortgage securing such a loan that covers property containing nonresidential space and a 1- to 4-family dwelling shall not be subject to this chapter).

(11) State

The term "State" means—

- (A) the several States;
- (B) the District of Columbia;
- (C) the Commonwealth of Puerto Rico;
- (D) the United States Virgin Islands;
- (E) Guam;
- (F) American Samoa;
- (G) the Northern Mariana Islands;
- (H) the Trust Territory of the Pacific Islands; and
- (I) Indian tribes, as defined by the Secretary.

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

Editorial Notes

REFERENCES IN TEXT

The National Housing Act, referred to in par. (10)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246. Titles I and II of the Act are classified generally to subchapters I (§1702 et seq.) and II (§1707 et seq.), respectively, of

chapter 13 of this title. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

CODIFICATION

Section is based on section 803 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.

Executive Documents

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 3753. Applicability

Single family mortgages encumbering real estate located in any State may be foreclosed by the Secretary in accordance with this chapter, or pursuant to other foreclosure procedures available, at the option of the Secretary.

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

Editorial Notes

CODIFICATION

Section is based on section 804 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.

§ 3754. Designation of foreclosure commissioner

(a) In general

The Secretary may designate a person or persons to serve as a foreclosure commissioner or commissioners for the purpose of foreclosing upon a single family mortgage.

(b) Power of sale

A foreclosure commissioner designated under this section shall have a nonjudicial power of sale.

(c) Qualifications

The foreclosure commissioner, if a natural person, shall 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 responsible, financially sound, and competent to conduct a foreclosure.

(d) Designation procedure

(1) Written designation

The Secretary may designate 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 person may be designated by his or her unique title or position instead of by name.

(2) Substitute commissioners

The Secretary may, with or without cause, designate a substitute foreclosure commis-

sioner to replace a previously designated foreclosure commissioner.

(3) Number

More than 1 foreclosure commissioner may be designated at any time.

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

Editorial Notes

CODIFICATION

Section is based on section 805 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.

§ 3755. Prerequisites to foreclosure

(a) In general

(1) Upon breach of covenant or condition

The Secretary is authorized to foreclose a mortgage under this chapter upon the breach of a covenant or condition in the mortgage agreement.

(2) No other pending proceedings

(A) Prior to commencement

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

(B) After commencement

No separately instituted foreclosure proceeding on a mortgage which is the subject of a foreclosure proceeding under this chapter shall be instituted by the Secretary during the pendency of foreclosure pursuant to this chapter.

(b) Other rights unaffected

Nothing in this chapter shall preclude the Secretary from—

(1) enforcing any right, other than foreclosure, under applicable Federal or State law, including any right to obtain a monetary judgment; or

(2) foreclosing under this chapter if the Secretary has obtained or is seeking any other remedy available pursuant to Federal or State law, or under the mortgage agreement, including the appointment of a receiver, mortgagee-in-possession status, or relief under an assignment of rents.

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

Editorial Notes

CODIFICATION

Section is based on section 806 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.

§ 3756. Commencement of foreclosure

(a) Request to foreclosure commissioner

If the Secretary, as holder of a single family mortgage, determines that the prerequisites to