

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.)

Editorial Notes

CODIFICATION

Section is based on section 812 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.

§ 3762. Disposition of sale proceeds

(a) Priority payments

Money realized from a foreclosure sale shall be made available for obligation and expenditure in the following order:

(1) Costs of foreclosure

To cover the costs of the foreclosure proceeding described in section 3761 of this title.

(2) Tax liens

To pay valid tax liens or assessments if required by the notice of default and foreclosure sale.

(3) Prior liens

To pay any liens recorded before the recording of the mortgage which are required to be paid in conformity with the terms of sale in the notice of default and foreclosure sale.

(4) Service charges and advances

To pay service charges and advances for taxes, assessments, and property insurance premiums.

(5) Interest

To pay any outstanding interest.

(6) Principal

To pay the principal outstanding 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 for in the mortgage agreement).

(7) Late charges or fees

To pay any late charges or fees.

(b) Other payments

(1) Other lienholders and the mortgagor

Any surplus of proceeds from a foreclosure sale, after payment of the items described in subsection (a) shall be paid in the following order:

(A) First, to holders of liens recorded after the mortgage in the order of priority under Federal law or the law of the State in which the security property is located.

(B) Second, to the appropriate mortgagor.

(2) Disputed claims

If the person to whom such surplus is 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 does not agree that some or all of the sale proceeds should be paid to a claimant as provided in this section, that part of the sale proceeds in question may be deposited by the foreclosure commissioner with an appropriate official or court authorized under law to receive disputed funds in such circumstances. 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 incurred in taking or defending such action shall be deductible from the disputed funds.