

INSTRUCTIONS TO FORECLOSURE COMMISSIONER TITLE II

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A. Introduction

1. The Secretary of Housing and Urban Development (the Secretary) has determined that there is valid reason to institute Foreclosure proceedings in the case or cases, which have been referred to you.
2. HUD uses the Single Family Non Judicial Foreclosure Act, 12 USC §3151 et.seq., to foreclose on all HUD-held single family loans whether or not state law allows non-judicial foreclosures or has a state non judicial foreclosure statute. If the Mortgagor or person of interest challenges the constitutionality of the Act, please contact the Oklahoma City office of General Counsel (“OKC OGC”) at (405) 609-8430. If you believe after examining the file, you may not be able to convey good and marketable title using the Non Judicial Foreclosure Statute, please call OKC OGC.
3. HUD employs a Contractor to service its HUD-held single-family loans. The servicer has sent you this package on behalf of HUD. HUD is your client even though you may receive certain instructions or information from the Contractor. The Contractor will provide you with an itemized statement of account as well as other information about the account. They will call you about the status of the case as well as inform you about any settlement offers or bankruptcy filings that you may receive. You should refer any settlement offers that you may receive to the Contractor as well as a status report of the case, date and time of the sale and any other relevant information to the case. Any questions regarding foreclosure procedures, interpretation of foreclosure statute or other related matters should be made to the OKC OGC.

B. Preliminary Steps

1. We do not have any title evidence in our records. While we are unaware of any encumbrance on the title, it is necessary to assure that marketable title passes at the foreclosure sale. You should immediately procure a title report, or other appropriate and customarily used title evidence. The information contained in that title evidence will assist you in serving the Notice of Default and Foreclosure Sale as described in Section D of these Instructions and Sec. 8 of the Appendix Guide. If a federal tax lien is disclosed, send a copy of the Notice of Default and Foreclosure Sale to the IRS, and contact the OKC OGC to confirm procedures to be followed in order to have the lien discharged.
2. Refer to the Foreclosure Check Sheet (Form HUD-92218), or other executed document provided to you by the Contractor for information related to the mortgagor’s military status. Retain that document in your file. Relevant recitals in the Deed will refer to compliance with the Soldiers’ and Sailors’ Civil Relief Act of 1940.

3. Record the Designation of Foreclosure Commissioner document you received from the Regional Counsel as required by the jurisdiction in which the foreclosure will occur. If sufficient, record the original Designation in one jurisdiction and provide certified copies in other jurisdictions where you have been referred foreclosure cases. Recitals in the Deed will refer to the recordation and will provide specific recording information.

C. Notice of Default and Foreclosure Sale

1. Prepare the Notice of Default and Foreclosure Sale required by the Act and by Sec. 6 of the Appendix to the Final Rule. You may use the enclosed form Notice and information contained in the enclosed mortgage documents. The sale must be scheduled between 9:00 a.m. and 4:00 p.m. by public auction at the courthouse or some other place where foreclosure sales are customarily held in the county in which the property is located, or at the property itself.
2. When you have determined the date of the foreclosure sale, inform the Contractor of the date of sale, and request an itemized statement of all amounts due under the mortgage based on acceleration. It is important that, when requesting such statement, you specify the date of the foreclosure sale since the amounts due will vary with the date of the sale.

D. Serving the Notice of Default and Foreclosure Sale

1. After you have prepared the Notice of Default and Foreclosure Sale, and have received the title update or report, you shall serve the Notice. [Note: “serve” or variations thereof, as used in these Instructions, refers to procedures for service of the Notice as set forth in the Act and the Appendix to the Final Rule, and includes filing, mailing, and posting.] The Notice must be sent by certified mail, postage prepaid, return receipt requested, to the following (except that multiple mailings are not required to be sent to any party with multiple capacities, e.g., and original mortgagor who is the security property owner and lives in one of the units). No additional notice will be required to be served, notwithstanding any notice requirements of any State or local law.
 - a. The current security property owner of record, as the record existed 30 days or less before the date originally set for the foreclosure sale, whether or not the notice describes a sale as adjourned as provided in the Act. The Notice must be mailed not less than 25 days before the date of the foreclosure sale to the last known address of the current owner or, if none, to the address of the security property, or, at your discretion, to any other address believed to be that of the current owner.

4. Although provisions of the statute, as reflected in subparagraphs (1) (a) - (d) above allow for the checking of the records 45 days before the original sale date, you shall check the records no more than 30 days before the sale and send the notice at least 25 days before the sale date.
5. The Notice of Default and Foreclosure Sale must be filed not less than 25 days before the date of the foreclosure sale 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 28 USC § 3201.

E. Publication

1. A copy of the Notice of Default and Foreclosure Sale must be published once a week during three successive calendar weeks before the date of the foreclosure sale. Such publication must be in a newspaper or newspapers having general circulation in the county or counties in which the security property being sold is located. 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 is a newspaper having general circulation for the purposes of this paragraph. [The published copy of the Notice may omit certain information about the mortgagor's default (the fourth "whereas" clause, or the second "whereas" clause if there is a purchase money mortgage), if you so determine.]
2. If there is no newspaper of general circulation published at least weekly in the county or counties in which the security property being sold is located, copies of the Notice of Default and Foreclosure Sale must be posted, not less than 21 days before the date of the foreclosure sale, at the courthouse of any county or counties in which the security property is located and at the place where the sale is to be held.

F. Presale Reinstatement-Withdrawal of Property From Sale

1. Immediately withdraw the security property from foreclosure and cancel the foreclosure sale in the following situations:
 - a. HUD informs you to cancel the Sale prior to or at the time of Sale.
 - b. You find, upon application of the Mortgagor not less than three business 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.
2. In cases of a foreclosure involving a monetary default you must withdraw the Sale in the following situations:

- a. There is tendered to you before public auction is completed all amounts that would be due under the mortgage agreement if payments under the mortgage had not been accelerated, and all costs of foreclosure incurred for which payment from the proceeds of foreclosure is provided in the Act, as reflected in Section 13 of the Appendix to the Final Rule; and
 - b. You find that there are no non-monetary defaults; provided, however, that HUD may inform you of the decision not to cancel a foreclosure sale pursuant to this subparagraph if the current mortgagor or owner of record has, on one or more previous occasions, caused a foreclosure of the mortgage, commenced pursuant to the Act or otherwise, to be canceled by curing a default.
3. In cases of a foreclosure involving a non-monetary default:
 - a. You find, upon application of the mortgagor before the date of foreclosure sale, that all non-monetary defaults are cured and that there are no monetary defaults; and
 - b. There is tendered to you before public auction is completed all amounts due under the mortgage agreement if payments under the mortgage had not been accelerated, including all amounts of expenditures secured by the mortgage and all costs of foreclosure incurred for which payment would be made from the proceeds of foreclosure.
4. Before withdrawing the security property from foreclosure under subparagraphs (1) (b), (2) or (3) of this section, you must provide HUD with a written statement of the reasons for the proposed withdrawal along with all documents submitted by the mortgagor in support of the proposed withdrawal. Upon receipt of this statement, HUD has ten (10) days in which to notify you of the decision as to whether the security property will be withdrawn from foreclosure. If the decision is that the security property should not be withdrawn from foreclosure, the HUD representative will provide the mortgagor with a copy of the decision at the same time the decision is provided to you. If the HUD representative receives your written statement less than 10 days before the scheduled foreclosure sale, the sale will automatically be postponed for 14 days so that a decision may be made. Under these circumstances, notice of the rescheduled sale, if any, will be served as described in Section G (4) below.
5. If you cancel the foreclosure, the mortgage will continue in effect as though acceleration had not occurred.

6. Cancellation of a foreclosure sale will have no effect on the commencement of a subsequent foreclosure proceeding.
7. You must file a notice of cancellation in the same place and manner provided for filing the Notice of Default and Foreclosure Sale as provided in Section D (5) above. The notice of cancellation shall include, at a minimum, the street address and legal description of the property, the date and place of the scheduled sale, and the fact that the sale will not be held. In addition, and as instructed by the HUD representative, you shall announce the cancellation at the time and place of the scheduled sale, and/or post the notice of cancellation at the site of the sale prior to the scheduled date and time.

G. Adjournment or Cancellation of Sale

1. You may, before or at the time of the foreclosure sale, adjourn or cancel the foreclosure sale if you determine, in your discretion, the following:
 - a. Circumstances are not conducive to 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 F above.
2. In deciding whether circumstances are conducive to a fair sale, you may only consider circumstances which exist or are likely to exist at the time of the sale and which will reduce significantly the attendance at the sale or the proceeds realized by the sale. Such circumstances include, but are not limited to, major adverse weather conditions, disasters, quarantine, or destruction of the property to be sold.
3. You may adjourn a foreclosure sale to a later hour within the period from 9:00 a.m. to 4:00 p.m. on the same day by announcing or posting, at the original place of sale, the new time of the foreclosure sale. The adjourned sale must be at the original place of sale.
4. Except as provided in paragraph (3) of this section, you may adjourn a foreclosure sale for not less than 9 and not more than 31 days, in which case you must serve a Notice of Default and Foreclosure Sale that is revised to state that the foreclosure sale has been adjourned to a specified date and time. The revised Notice may include any other information you deem appropriate. You shall announce the adjournment at the time and place of the originally scheduled sale,

and/or post the notice of adjournment at the site of the sale prior to the originally scheduled date and time.

- a. Such Notice is to be served as provided in Section D, above, except that publication may be made on any of three separate days before the revised date of foreclosure sale. If there is no newspaper of general circulation that would permit publication on any of three separate days before the revised date of foreclosure sale, the Notice of Default and Foreclosure Sale must be posted, not less than nine days before the date to which the sale has been adjourned, at the courthouse of any county or counties in which the property is located, and at the place where the sale is to be held.
 - b. Notice provided by filing and mailing is to be made at least seven days before the date to which the foreclosure sale has been adjourned.
 - c. In the case of a sale adjourned to a later date, you must also mail a copy of the revised Notice of Default and Foreclosure Sale to the First Madison representative at least seven days before the date to which the sale has been adjourned.
5. Provisions of Section F (5), (6) and (7) apply to foreclosures adjourned or canceled under this Section.

H. Conduct of Sale

1. The foreclosure sale shall be conducted in a manner and at a time and place as identified in the Notice of Default and Foreclosure Sale. The sale shall be scheduled for a date 30 or more days after the due date of the earliest unpaid installment as described in Section 7 (d) of the Appendix guide, or the earliest occurrence of a non-monetary default.
2. Conduct the foreclosure sale in a manner that is fair to both the Mortgagor and the Secretary (See Section G (1) above) and consistent with the provisions of the Act.
3. Record the names, business addresses, and telephone numbers of all persons attending the sale.
4. Bidding at the Foreclosure Sale
 - a. The Contractor will provide bidding instructions to you.
 - b. Accept written and oral bids, which conform to requirements in the Notice of Default and Foreclosure Sale.

- c. Written bids must be sealed, unconditional, and for one price only. Written bids **will** be entered by announcement at the sale. Announce the name of each bidder, including the Secretary, and the amount of the bid.
 - d. Accept oral bids from any party, including parties who submitted one-price sealed bids.
 - e. Before the close of the sale, announce the amount of the high bid and the name of the successful bidder.
5. Notwithstanding the provisions of Paragraph 4 of this section, neither you nor any relative, related business entity, or employee is permitted to bid in any manner on the security property subject to the foreclosure sale, except that you or an auctioneer may be provided by the Contractor with a bid to enter on the Secretary's behalf. Your relatives who may not bid include parents, siblings, spouses and children. A related business entity that may not bid or whose employees may not bid is one whose relationship (at the time you are designated and during the term of your service as foreclosure commissioner) with the entity of the foreclosure commissioner is such that, directly or indirectly, one entity formulates, directs, or controls the other entity; or has the power to formulate, direct, or control the other entity; or has the responsibility and authority to prevent, or promptly to correct, offensive conduct of the other entity.
6. You may serve as an auctioneer, or you may employ an auctioneer to conduct the sale. If you employ an auctioneer to conduct the foreclosure sale, the auctioneer must be a licensed auctioneer, an officer of State or local government, or any other person who commonly conducts foreclosure sales in the area in which the security property is located. You will compensate an auctioneer from the proceeds of your commission described in Section I, below.
7. All bidders, except the Secretary, must submit a deposit totaling 10% of the Secretary's bid in the form of a certified or cashier's check payable to the Secretary of HUD. A deposit need not accompany each oral bid. If the successful bid is oral, the deposit must be presented before the bidding is closed. Announce prior to the sale that the deposit of the successful bidder is nonrefundable. Any deposit requirement shall be stated in the Notice of Default and Foreclosure Sale. At the conclusion of the sale, the deposits of any unsuccessful bidders will be returned to them.

8. Payments from Purchasers
 - a. No later than two business days after your receipt of a deposit in the form of a certified or cashier's check payable to the Secretary of the Department of Housing and Urban Development, you shall remit it by overnight mail/delivery to the Contractor.
 - b. The check should show the FHA case number and, if possible, the Single Family Mortgage Notes System number. Your transmittal letter must include the mortgagor's name, FHA case number, and property address.
 - c. The remainder of the purchase price must be paid in accordance with instructions from Contractor and as set forth in the Notice of Default and Foreclosure Sale.
 - d. Reports of the outcome of sales conducted by you are to be included in the monthly reports made to the Contractor (See Sec. O of these Instructions).
 - e. If the Secretary is the successful bidder, there will be no deposit or subsequent payment required.
 - f. If a party other than the Secretary is the successful bidder, immediately notify the Contractor.

I. Foreclosure Costs

1. HUD will pay the following foreclosure costs from the sale proceeds, or from other available sources, if sales proceeds are insufficient, before satisfaction of any other claim to the sale proceeds.
 - a. Advertising costs and postage expenses incurred in serving the Notice of Default and Foreclosure Sale.
 - b. Mileage by the most reasonable road distance for posting the Notice of Default and Foreclosure Sale, if required, and for your or the auctioneer's attendance at the sale. The mileage is paid at the rate provided in 28 U.S.C. 1821.
 - c. Reasonable and customary costs incurred for title and lien record searches.
 - d. The necessary out-of-pocket costs incurred for recording documents.

- e. Your commission for the conduct of the foreclosure in the amount set forth in your Designation as a Foreclosure Commissioner for the State in which the security property is located. A commission may be allowed to you notwithstanding termination of the sale or appointment of a substitute commissioner before the sale takes place, as provided in the Designation document.

J. Transfer of Title and Possession

1. If the Secretary is the successful bidder, issue a deed to the Secretary upon receipt of the amount needed to pay the costs for tax liens and prior liens, as listed in the Appendix to the Final Rule, parts 14 (a) (2) and (3).
2. If the Secretary is not the successful bidder, issue a deed to the purchaser or purchasers upon receipt of the entire purchase price in accordance with the terms of the sale as provided in the Notice of Default and Foreclosure Sale. Payments are to be handled as set forth in Sec. H (8) of these instructions.
3. The deed or deeds you issue shall be without warranty or covenants to the purchaser or purchasers. You may use the attached form deed, modified as appropriate to conform to local recordation requirements. Note that necessary steps shall be taken to ensure that the chain of title can subsequently be identified as provided in Section K (3) below.
4. A purchaser at a foreclosure sale held pursuant to the act, whether the Secretary or a third party, is entitled to possession upon passage of title under paragraph (3) of this Section, subject to any interest or interests that are not barred as described in Section 18 of the Appendix Guide. Any person remaining in possession of the property after the passage of title is deemed a tenant at sufferance subject to eviction under applicable law.
5. If a purchaser dies before execution and delivery of the deed conveying the property to the purchaser, execute and deliver the deed to a legal representative of the decedent purchaser's estate upon payment of the purchase price in accordance with the terms of sale. Such delivery to the representative of the purchaser's estate will have the same effect as if accomplished during the lifetime of the purchaser.

K. Recordation and Disposition of Documents

1. If the Secretary is the successful bidder, record the deed in the appropriate recorder's office as soon as possible, but no later than three business days after the sale. When recording the deed to the Secretary, instruct the recorder's office to forward the recorded original document to the Contractor.
2. When a party other than the Secretary purchases the property at the foreclosure sale, that party is responsible for having the deed recorded, or the Contractor may instruct you to have the deed recorded. Provide the Contractor with a copy of the deed.
3. You must include in the recitals of the deed to the purchaser/successful bidder, or in an affidavit or addendum to be recorded with the deed, the following items:
 - a. Include the date, time, and place of the foreclosure sale.
 - b. Include a statement that the Secretary held the foreclosed mortgage.
 - c. Provide the date of the foreclosed mortgage, the date of recordation of that mortgage, the office in which the mortgage was recorded, and the liber and folio numbers or other appropriate description of the recordation of the mortgage.
 - d. Describe the details of the service of the Notice of Default and Foreclosure Sale, including the names and addresses of the persons to whom the Notice was mailed and the date on which the Notice was mailed the name of the newspaper in which the notice was published and the dates of publication, and the date on which service by posting, if required, was accomplished.
 - e. Include the date and place of filing the Notice of Default and Foreclosure Sale.
 - f. A statement that the foreclosure was conducted in accordance with the provisions of the Act and with the terms of the Notice of Default and Foreclosure Sale.
 - g. State the name of the successful bidder and the amount of the successful bid.
 - h. Include a statement of compliance with the Soldiers and Sailors' Civil Relief Act of 1940.

- i. Include recording information of the Foreclosure Commissioner Designation document.
4. When you convey the property to the Secretary, no tax may be imposed or collected with respect to your deed, including any tax customarily imposed upon the deed instrument or upon the conveyance or transfer of title to the property.
5. The register of deeds or other appropriate official in the county where the property is located must, upon tendering of the customary recording fees, accept all instruments pertaining to the foreclosure, which you submit for recordation. If you elect to include the recitations described in Paragraph (3) of this section in an affidavit or and addendum to the deed, the affidavit or addendum must be accepted for recordation. Failure to collect or pay a tax as described in Paragraph (4) of this section is not grounds for refusing to record such instruments, for failing to recognize such recordation as imparting notice, or for denying the enforcement of such instruments and their provisions in any State or Federal Court.
6. The Clerk of the Court or other appropriate official must cancel all liens as requested by you.
7. If you encounter problems with the recordation of documents or cancellation of liens, you shall provide such information to Oklahoma City OGC immediately.

L. Failure to Close the Sale

1. 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 your election, and after consultation with Contractor, will be liable to the Secretary for any costs incurred as a result of such failure.
2. If the high bidder is other than HUD and is unable to close the sale within the required time or within any extensions of time granted by HUD, you shall check with the Contractor to determine if you should offer the property to the second highest bidder for the highest price offered by that bidder. Within two business days after acceptance, you shall collect a deposit from the second highest bidder in the amount specified in the Notice of Default and Foreclosure Sale, and notify the Contractor. If the second highest bidder refuses the offer, or fails to comply with the terms of the sale, request further instructions from the Contractor about offering the property to the next highest bidder, having a new sale or engaging in any other which are appropriate to complete the foreclosure sale.

P. Payments by HUD to Foreclosure Commissioner

1. You may submit your claim for your commission and reimbursements after you have filed the deed for recordation or after you have issued a deed to a third party purchaser. Keep such records as will permit the Secretary to verify the costs claimed.
2. When submitting your claim for reimbursement of amounts claimed under Sec I (1)(a) – (e), itemize all expenses and submit receipts for those expenses, which exceed \$25.00.
3. If a foreclosure is terminated or withdrawn prior to completion, you will be paid a percentage of the commission, as described in the Referral letter and the Foreclosure Commissioner designation, in addition to reimbursement of your out-of-pocket expenses.
4. If a foreclosure is suspended (See Sec. N above), and if you have incurred costs described in Sec. I, you may submit an interim bill to the Contractor. Your invoice for subsequent out-of-pocket expenses will be submitted at such time as the foreclosure is completed or the case is terminated or otherwise withdrawn.

Q. Contacts

1. Contractor

(The Sec-Held Servicing Contractor shall insert their contact information here.)

2. Department of Housing and Urban Development

(The Sec-Held Servicing Contractor shall insert the current GTM's name here at (800) 594-9057.