

deed of trust instrument, trust deed, or instrument or instruments creating the mortgage, including any instrument incorporated by reference therein (including any applicable regulatory agreement), and any instrument or agreement amending or modifying any of the foregoing;

(4) "mortgagor" means the obligor, grantor, or trustor named in the mortgage agreement and, unless the context otherwise indicates, includes the current owner of record of the security property whether or not personally liable on the mortgage debt;

(5) "person" includes any individual, group of individuals, association, partnership, corporation, or organization;

(6) "record" and "recorded" included "register" and "registered" in the instance of registered land;

(7) "security property" means the property, real, personal or mixed, or an interest in property, including leaseholds, life estate, 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;

(8) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, and Indian tribes as defined by the Secretary;

(9) "county" means county as defined in section 2 of title 1; and

(10) "Secretary" means the Secretary of Housing and Urban Development.

(Pub. L. 97-35, title III, §363, Aug. 13, 1981, 95 Stat. 422; Pub. L. 102-550, title V, §517(b), Oct. 28, 1992, 106 Stat. 3792.)

REFERENCES IN TEXT

The National Housing Act, referred to in par. (2)(A), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the Act is classified principally to subchapter II (§1707 et seq.) of chapter 13 of this title. Title X of the Act, which was classified principally to subchapter IX-A (§1749aa et seq.) of chapter 13 of this title, was repealed by Pub. L. 101-235, title I, §133(a), Dec. 15, 1989, 103 Stat. 2027. For complete classification of this Act to the Code, see section 1701 of this title and Tables.

Section 312 of the Housing Act of 1964, referred to in par. (2)(B), is section 312 of Pub. L. 88-560, which was classified to section 1452b of Title 42, The Public Health and Welfare, and was repealed by Pub. L. 101-625, title II, §289(b)(1), Nov. 28, 1990, 104 Stat. 4128.

Section 801 of the Cranston-Gonzalez National Affordable Housing Act, referred to in par. (2)(C), (D), is section 801 of Pub. L. 101-625.

AMENDMENTS

1992—Par. (2). Pub. L. 102-550 amended par. (2) generally. Prior to amendment, par. (2) read as follows: " 'multifamily mortgage' means a mortgage held by the Secretary pursuant to title II of the National Housing Act or section 312 of the House Act of 1964 covering any property, except a property on which there is located a one- to four-family residence;".

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.

§ 3703. Applicability

Multifamily mortgages held by the Secretary 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. If the Secretary forecloses on any such mortgage pursuant to such other foreclosure procedures available, the provisions of section 3706(b) of this title may be applied at the discretion of the Secretary.

(Pub. L. 97-35, title III, §364, Aug. 13, 1981, 95 Stat. 423; Pub. L. 98-181, title IV, §471, Nov. 30, 1983, 97 Stat. 1237.)

AMENDMENTS

1983—Pub. L. 98-181 inserted provision relating to application of section 3706(b) of this title in event of foreclosure under other foreclosure procedures.

§ 3704. Foreclosure commissioner; designation, duties, etc.

A foreclosure commissioner or commissioners designated pursuant to this chapter shall have a nonjudicial power of sale as provided in this chapter. Where the Secretary is the holder of a multifamily mortgage, the Secretary may designate a foreclosure commissioner and, with or without cause, may designate a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, by executing a duly acknowledged, written designation stating the name and business or residential address of the commissioner or substitute commissioner. The designation shall be effective upon execution. Except as provided in section 3707(b) of this title, a copy of the designation shall be mailed with each copy of the notice of default and foreclosure sale served by mail in accordance with section 3708(1) of this title. 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 the laws of the State in which the security property is located. The foreclosure commissioner shall be a person who is responsible, financially sound and competent to conduct the foreclosure. More than one foreclosure commissioner may be designated. If a natural person is designated as foreclosure commissioner or substitute foreclosure commissioner, such person shall be designated by name, except that where such person is designated in his or her capacity as an official or employee of the government of the State or subdivision thereof in which the security property is located, such person may be designated by his or her unique title or position instead of by name. The Secretary shall be a guarantor of payment of any judgment against the foreclosure commissioner for damages based upon the commissioner's failure properly to perform the commissioner's duties. As between the Secretary and the mortgagor, the Secretary shall bear the risk of any financial default by the foreclosure commissioner. In the event that the Secretary makes any payment pursuant to the preceding two sentences, the Secretary shall be fully subrogated to the rights satisfied by such payment.