



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Special Attention of:

Director, National Servicing Center
Deputy Director, National Servicing Center
Directors, Homeownership Centers
Deputy Directors, Homeownership Centers
Regional Directors
Deputy Regional Directors
Directors, HUD Field Offices
GTR for HUD SHM Contractor

NOTICE 2005-07

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Cross Reference: H95-100

Subject: HUD Single Family Non-Judicial Foreclosure Statute

This Notice provides instructions to HUD staff for conducting non-judicial foreclosures on Secretary-held mortgages. The National Servicing Center (NSC) is charged with this responsibility, which may be further delegated to a contractor.

The foreclosure statute provides HUD with the option of conducting foreclosures on Secretary-held mortgages utilizing a uniform non-judicial foreclosure procedure instead of the State foreclosure procedure or procedures under other federal laws. In states where judicial foreclosures are the usual or the only method of foreclosure under state law, it will usually be more cost effective for the Department to use the non-judicial foreclosure procedure. The statute may also be used in states presently using state non-judicial foreclosure procedures.

All foreclosure actions under this legislation must be initiated in the name of the Secretary of Housing and Urban Development. If, as a result of any foreclosure action, litigation is commenced which requires a court appearance (such as a challenge to the foreclosure or a bankruptcy proceeding), the foreclosure may have to be suspended or terminated and must be referred to the local HUD Office of General Counsel or to the U.S. Attorney's Office pursuant to procedures agreed upon by the local HUD Office of General Counsel. If legal issues other than litigation arise at anytime, it is necessary to consult with the appropriate HUD legal staff.

This Notice gives further background information about the foreclosure commissioners, referral of cases and documents that have been developed. In addition, this Housing Notice sets forth procedures to be followed by the NSC and/or the Secretary-Held Servicing Contractor (the Contractor), in the management of foreclosures that will be referred pursuant to the National Housing Act.

DESIGNATION OF FORECLOSURE COMMISSIONERS BY REGIONAL COUNSEL

In a Delegation and Redelelegation of Authority published in the Federal Register (FR) on November, 15, 1995, at 60 FR 57525, the Secretary of HUD delegated to the General Counsel, who retains this authority and redelegated it to HUD's Field Assistant General Counsel, the authority to designate foreclosure commissioners and to set compensation for the commissioners. By notice published on March 26, 2002, at 67 FR 13790, the title of Field Assistant General Counsel was changed to the title of Regional Counsel and in a subsequent notice published on June 27, 2003, at 68 FR 38382, all existing redelegations of authority to Field Assistant General Counsel were amended to read Regional Counsel for the relevant HUD geographical area.

The process of designating persons or entities to serve as foreclosure commissioners is conducted through application. The Office of Management and Budget (OMB) has approved that information collection process under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and it has been assigned OMB control number 2510-0012. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

REFERRAL OF CASES TO FORECLOSURE COMMISSIONERS

The Contractor, through direction from the NSC, should refer the foreclosure cases to any of the designated foreclosure commissioners within the local office's jurisdiction. Referrals will be made using the sample format that has been prepared for this purpose (Attachment 1) and will be signed by the Contractor.

Under the procedures, there is no requirement for competitive contracting. According to the statute, the "commissioners" are designated appointees and, as such, shall be paid a fixed fee for foreclosure service plus a reimbursement for out-of-pocket expenses that are adequately supported by bills and receipts. Allowable expenses are enumerated in the Statute and in the Final Rule and its Appendix and include title review, publication and recordation costs.

At the time of referral of a case or cases, the Contractor will also submit instructions to the Foreclosure Commissioner, along with a Notice of Default and Foreclosure Sale Form (Attachment 2) and a Deed Form (Attachment 3). These documents may be revised as appropriate.

MANAGING FORECLOSURES

Duties of the Contractor

1. Refer foreclosure cases with complete packages (note, mortgage, statement of account, etc.) to a foreclosure commissioner. Use the Specified format (Attachment 1) and attach all items listed on the form.
2. Send occupied conveyance notification to the occupants of the property.

3. Track the status of each referral until final disposition.
4. Authorize the foreclosure commissioner to obtain certified documents or affidavits as needed to commence foreclosure.
5. Monitor and evaluate the performance of the commissioner(s) with regard to:
 - a. Timeliness and adequacy of foreclosure;
 - b. Submission of appropriate notifications to the contractor regarding third-party Commissioner sales within two business days after sale (see Attachment 4, Instructions to Foreclosure Commissioner, Sec. H.8);
 - c. Prompt remittance of funds to the foreclosure manager by overnight mail delivery in instances of payoffs, pay current collections and third-party sales (see Attachment 4, Instructions to Foreclosure Commissioner, Sec. H 8); and
 - d. Receipt and adequacy of status reports (see Attachment 4, Instructions to Foreclosure Commissioner, Sec. O).
6. Review status reports from the foreclosure commissioner. Enter data into tracking software. Evaluate reports and performance.
7. Review all invoices submitted for reimbursement from the foreclosure commissioner and prepare disbursement requests. Provide all invoices and documentation of expenses to designated HUD staff for 100 percent post-payment audit.
8. Instruct the commissioner to immediately consult with HUD Counsel about suspending foreclosure in the event of a bankruptcy filing or other litigation requiring court action, which necessitates involvement of HUD Counsel and/or the U.S. Attorney's Office.
9. Instruct the commissioner to terminate foreclosure if a deed-in-lieu of foreclosure is accepted, the account has been reinstated or sufficient payment has been received under a Chapter 13 bankruptcy to return the case for further servicing.
10. Provide foreclosure sale bid instructions to the commissioner. Foreclosure sale bids may be for an amount less than the total debt whenever the NSC Director can justify a lower bid amount by establishing that the value of the property is less than the debt. Bid amounts can be lower than the value of the property to encourage third-party sales. The bid amount should be the value of the property minus reasonable adjustments similar to those used in computing the net proceeds of sale under a "compromise offer."
11. Provide instructions to the foreclosure commissioners in the event that a third-party purchaser fails to comply with the terms of the sale (see Attachment 4, Instructions to Foreclosure Commissioners, Sec. L.1). If there are additional bidders, the commissioner

can generally be instructed to offer the property to the next highest bidder for the highest price offered by that bidder.

12. Check with the Real Estate Owned (REO) Division within the appropriate Homeownership Center to make sure the occupied conveyance process has been completed and the mortgagor/occupants have not been accepted as HUD tenants.
13. Procurement of title insurance policies is not required after the completion of foreclosure under the Federal Non-Judicial Foreclosure Statute.
14. Maintain separate foreclosure commissioner files for a complete record of foreclosures processed and any disbursements made.

TRACKING FORECLOSURES AND MONITORING FORECLOSURE COMMISSIONERS

When the foreclosure referral is made to a commissioner, the Contractor should enter the appropriate information into the foreclosure tracking software. The Contractor must have a separate “Foreclosure Agent ID” for each foreclosure commissioner. The tracking software allows creation of a table of Foreclosure Agents, each with a separate number. Thus, reports can be generated and sorted by Foreclosure Agent ID.

PAYING FORECLOSURE COMMISSIONERS

The Contractor will approve the payment to the foreclosure commissioners. Vouchers for payment of invoices and documentation of expenses must be submitted to the HUD contractor, using Standard Form (SF)-1034, “Public Voucher for Purchase and Services Other Than Personal.” Once completed, the voucher for payment will be reviewed and payment made to the commissioner by the contractor. After payment, the contractor will submit each package to their Government Technical Representative/Government Technical Monitor for 100 percent post payment audit. The invoice from the commissioner must list all out-of-pocket expenses (e.g., title evidence, publication, postage for the required Notices (when the Notice must be posted), mileage and recordation costs. Supporting documentation for all costs over \$25 must be submitted with the invoice (see Attachment 4, Instructions to Foreclosure Commissioner, Sec. P2). The invoice from the commissioner and the SF-1034, “Public Voucher for Purchase and Services Other Than Personal”, may be for one or more foreclosure cases. If a foreclosure is terminated or withdrawn by the Contractor, the commissioner will still be entitled to reimbursement for services and expenses up to the time of termination or withdrawal (see Attachment 4, Instructions to Foreclosure Commissioner, Sec. P3; see also the Foreclosure Commissioner Designation and the Referral Letter (Attachment 1) for information on the percentage of payment in such cases).

If a foreclosure is suspended by HUD for an indefinite period of time, and the foreclosure commissioner is asked to retain the case and file, then the commissioner may submit an interim invoice for out-of-pocket expenses incurred up to the time of suspension, along with supporting documentation as previously described (see Attachment 4, Instructions

to Foreclosure Commissioner, Sec. P4). The voucher, invoice and supporting documentation must be sent to the Contractor.

If you have questions regarding this Notice, you may wish to contact Sally Bene of HUD's Tulsa Office at (918) 581-7168, extension 3026, or Grant Simms at (918) 581-7168, extension 3015 (these are not toll-free numbers). Legal questions should be directed to Matthew Forman, Deputy Assistant General Counsel, Office of General Counsel, Single Family Mortgage Division at (202) 708-0080, extension 5217, or Bruce Albright, Assistant General Counsel, Office of General Counsel, Single Family Mortgage Division at (202) 708-0080 (these are not toll-free numbers).

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Federal Housing Commissioner