

DISTRICT OF COLUMBIA
OFFICIAL CODE

TITLE 42.
REAL PROPERTY.

CHAPTER 8.
MORTGAGES AND DEEDS OF TRUST.

2001 Edition

DISTRICT OF COLUMBIA OFFICIAL CODE
CHAPTER 8. MORTGAGES AND DEEDS OF TRUST.

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CHAPTER 8. MORTGAGES AND DEEDS OF TRUST.

§ 42-801. EXECUTION, ACKNOWLEDGMENT, AND RECORDATION IN SAME MANNER AS DEEDS.

Mortgages and deeds of trust to secure debts, conveying any estate in land, shall be executed and may be acknowledged and recorded in the same manner as absolute deeds; and they shall take effect both as between the parties thereto and as to others, bona fide purchasers and mortgagees and creditors, in the same manner and under the same conditions as absolute deeds.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 521; June 30, 1902, 32 Stat. 532, ch. 1329; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-701.

1973 Ed., § 45-601.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

Law 14-132, the "Home Loan Protection Act of 2002", was introduced in Council and assigned Bill No. 14-515, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on February 5, 2002, and February 19, 2002, respectively. Signed by the Mayor on March 1, 2002, it was assigned Act No. 14-296 and transmitted to both Houses of Congress for its review. D.C. Law 14-132 became effective on May 7, 2002.

Miscellaneous Notes

Section 602(b) of D.C. Law 14-132, as amended by section 42(b) of D.C. Law 14-213, provides:

"Sections 95, 521, 522, 523, 534, 535, 536, 537, 538, 539, 539a, 544, and 545 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code §§ 42-801, 42-802, 42-803, 42-804, 42-811, 42-812, 42-813, 42-814, 42-815, 42-815.01, 42-816, 42-817, 42-818, and 42-819) and sections 1, 2, 3, 11, 13, 14, and 26 of the Compiled Statutes of the District of Columbia (D.C. Official Code §§ 42-805, 42-806, 42-807, 42-808, 42-809, 42-810, and 42-820), and the regulations adopted thereunder, are revived as of November 6, 2001."

§ 42-802. DUTY OF RECORDER.

It shall be the duty of the Recorder of Deeds to record all such mortgages and deeds of trust in the same manner as absolute deeds.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 523; June 30, 1902, 32 Stat. 532, ch. 1329; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 2551.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-702.

1973 Ed., § 45-602.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-803. ESTATE OF MORTGAGEE OR TRUSTEE; CONVEYANCE THEREOF.

The legal estate conveyed to a mortgagee, his heirs and assigns, or to a trustee to secure a debt, his heirs and assigns, shall be construed and held to be a qualified fee simple, determinable upon the release of the mortgage or deed of trust, as hereinafter provided, or the appointment of a new trustee by agreement of the parties pursuant to § 42-814(b) or by judicial decree for the causes hereinafter mentioned; provided, that nothing in this section contained shall prevent the passing of an absolute and unqualified estate in fee simple under a deed made by the mortgagee, trustee, or new trustee in pursuance of the powers conferred by the mortgage or deed of trust.

(Mar. 3, 1901, 31 Stat. 1271, ch. 854, § 522; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(a); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-703.

1973 Ed., § 45-603.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-804. SURVIVAL OF MORTGAGEE'S OR TRUSTEE'S TITLE.

Whenever a mortgage or deed of trust to secure a debt is executed to 2 or more mortgagees or trustees in fee simple, upon the death of any 1 or more of them the legal title and the trust attached to it shall be held to survive to the survivor or survivors and the heirs of the last survivor, subject to the provisions aforesaid.

(Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 533; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-704.

1973 Ed., § 45-604.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-805. WHILE ACTION PENDING, MONEY DUE PAYABLE TO MORTGAGEE OR COURT; EFFECT THEREOF.

Where any action shall be brought on any bond for payment of the money secured by mortgage, or performance of the covenants therein contained, or where any action of ejectment shall be brought in any court of record by any mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending in any court of equity, for or touching the foreclosure or redeeming of such mortgaged lands, tenements, or hereditaments; if the person or persons having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant or defendants in such action, shall at any time, pending such action, pay unto such mortgagee or mortgagees, or, in case of his, her, or their refusal, shall bring into court where such action shall be depending, all the principal monies and interest due on such mortgage, and also all such costs as have been expended in any suit or suits at law or in equity upon such mortgage (such money for principal, interest, and costs to be ascertained and computed by the court where such action is or shall be depending, or by the proper officer by such court to be appointed for that purpose) the monies so paid to such mortgagee or mortgagees, or brought into such court, shall be deemed and taken to be in full

satisfaction and discharge of such mortgage, and the court shall and may discharge every such mortgagor, or defendant, of and from the same accordingly; and shall and may, by rule or rules of the same court, compel such mortgagee or mortgagees, at the costs and charges of such mortgagor or mortgagors, to assign, surrender, or reconvey such mortgaged lands, tenements, and hereditaments, and such estate and interest, as such mortgagee or mortgagees have or hath therein, and deliver up all deeds, evidences, and writings, in his, her, or their custody, relating to the title of such mortgaged lands, tenements, and hereditaments, unto such mortgagor or mortgagors, who shall have paid or brought such monies into the court, his, her, or their heirs, executors, or administrators, or to such other person or persons, as he, she, or they, shall for that purpose nominate or appoint.

(7 Geo. 2, ch. 20, § 1, 1734; Kilty's Rep. 251; Alex. Br. Stat. 726; Comp. Stat., D.C., p. 395, § 1; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-705.

1973 Ed., § 45-605.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-806. DECREE OR ORDER WITHOUT HEARING WHERE DEFENDANT FILES REQUEST AND PLAINTIFF FILES ADMISSION.

Where any bill or bills, suit or suits, shall be filed, commenced, or brought in the court of equity, by any person or persons having or claiming any estate, right, or interest, in any lands, tenements, or hereditaments, under or by virtue of any mortgage or mortgages thereof, to compel the defendant or defendants in such suit or suits (having or claiming a right to redeem the same) to pay the plaintiff or plaintiffs in such suit or suits, the principal money and interest due on any such mortgage, or the principal money and interest due on such mortgages, together with any sum or sums of money due on any encumbrance or specialty, charged or chargeable on the equity of redemption thereof, and in default of payment thereof, to foreclose such defendant or defendants of his, her, or their right or equity of redeeming such mortgaged lands, tenements, or hereditaments; such equity court, where such suit or suits shall be depending, upon application made to such court by the defendant or defendants in such suit, having a right to redeem such mortgaged lands, tenements, or hereditaments, and upon his or their admitting the right and title of the plaintiff or plaintiffs in such suit, may and shall at any time or times, before such suit or cause shall be brought to hearing, make such order or decree therein, as such court or courts might or could have made therein, in case such suit or cause had then been regularly brought to hearing before such court or courts; and all parties to such suit or suits shall be bound by such order or decree so made, to all intents and purposes, as if such order or decree had been made, by such court, at or subsequent to the hearing of such cause or suit.

(7 Geo. 2, ch. 20, § 2, 1734; Kilty's Rep. 251; Alex. Br. Stat. 727; Comp. Stat., D.C., p. 396, § 2; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-706.

1973 Ed., § 45-606.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-807. LIMITATIONS UPON RIGHT OF REDEMPTION IN §§ 42-805 AND 42-806.

Sections 42-805 and 42-806 or anything therein contained, shall not extend to any case where the person or persons, against whom the redemption is or shall be prayed, shall (by writing under his, her, or their hands, or the hand of his, her, or their attorney, agent, or solicitor, to be delivered before the money shall be brought into such court at law, to the attorney or solicitor for the other side) insist, either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other or different principal sums, than what appear on the face of the mortgage, or shall be admitted on the other side; nor to any case where the right of redemption to the mortgaged lands and premises in question in any cause or suit shall be controverted or questioned by or between different defendants in the same cause or suit; nor shall be any prejudice to any subsequent mortgagee or mortgagees, or subsequent encumbrancer.

(7 Geo. 2, ch. 20, § 3, 1734; Kilty's Rep. 251; Alex. Br. Stat. 728; Comp. Stat., D.C., p. 397, § 3; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-707.

1973 Ed., § 45-607.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-808. CONVEYANCE OR ASSURANCE BY INFANT FOLLOWING COURT ORDER.

It shall and may be lawful to and for any person or persons, under the age of 18, by the direction of the court of chancery, signified by an order made upon hearing all parties concerned, on the petition of the person or persons for whom such infant or infants shall be seized or possessed in trust, or of the mortgagor or mortgagors, guardian or guardians of such infant or infants, or person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any infant or infants are or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the said court of chancery shall, by such order so to be obtained, direct to any other person or persons; and such conveyance or assurance so to be had and made, as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said infant or infants were, at the time of making such conveyance, or assurance, of the full age of 18.

(7 Anne, ch. 19, § 1, 1708; Kilty's Rep. 247; Alex. Br. Stat. 679; Comp.Stat., D.C., p. 79, § 13; July 22, 1976, D.C. Law 1-75, § 4(i), 23 DCR 1181; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-708.

1973 Ed., § 45-608.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

Law 1-75, the "District of Columbia Age of Majority Act," was introduced in Council and assigned Bill No. 1-252, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on April 6, 1976, and April 20, 1976, respectively. Signed by the Mayor on May 14, 1976, it was assigned Act No. 1-116 and transmitted to both Houses of Congress for its review.

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-809. CONVEYANCE OR ASSURANCE BY INFANT TRUSTEE OR MORTGAGEE UNDER COURT ORDER.

All and every such infant or infants, being only trustee or trustees, mortgagee or mortgagees, as aforesaid, shall and may be compelled by such order so, as aforesaid, to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of full age are compellable to convey or assign their trust, estates, or mortgages.

(7 Anne, ch. 19, § 2, 1708; Kilty's Rep. 247; Alex. Br. Stat. 680; Comp. Stat., D.C., p. 79, § 14; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b) 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-709.

1973 Ed., § 45-609.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-810. MORTGAGEE MAY REDEEM PRIOR MORTGAGE; PRIOR MORTGAGE MAY NOT BAR.

If it so happen there be more than 1 mortgage at the same time made, by any person or persons to any person or persons, of the same lands and tenements, the several late or under mortgagees, his, her, or their heirs, executors, administrators, or assigns, shall have power to redeem any former mortgage or mortgages, upon payment of the principal debt, interest, and costs of suit, to the prior mortgagee or mortgagees, his, her, or their heirs, executors, administrators, or assigns; anything therein contained to the contrary thereof in anywise notwithstanding.

(4 & 5 W. & M., ch. 16, § 4, 1692; Kilty's Rep. 242; Alex. Br. Stat. 579; Comp. Stat., D.C. 237, § 26; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-710.

1973 Ed., § 45-610.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-811. APPOINTMENT OF TRUSTEE IN EVENT OF DEATH OF MORTGAGEE OR TRUSTEE; PROCEDURE; SUMMARY DECREE.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the court having probate jurisdiction, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 42-814(b) and the execution of the trusts of said deed of trust by such new trustee.

(Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(b); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(1); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-711.

1973 Ed., § 45-611.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-812. EQUITY PRACTICE FOLLOWED WHERE ANSWER SETS UP DEFENSE AGAINST FORECLOSURE.

If matter of defense against the foreclosure of said mortgage or the enforcement of said deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 535; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-712.

1973 Ed., § 45-612.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-813. REPLACEMENT OF DECEASED, APPOINTED TRUSTEE.

In case of the death of any trustee appointed as aforesaid without having executed the trusts of the mortgage or deed of trust, a like proceeding to that provided for in § 42-811 may be had to appoint a successor to him in the said trusts.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 536; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-713.

1973 Ed., § 45-613.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-814. PETITION FOR NEW TRUSTEE; CAUSES; PROCEDURE; WRITTEN AGREEMENT OF PARTIES.

(a) In case of the refusal of any trustee named in a deed of trust to secure a debt to accept the trusts thereby created, or of his resignation of said trust after accepting the same, which is hereby allowed, or of his removal from the District of Columbia, or of his inability to act, or for any other good cause shown, it shall be lawful for any party interested in the execution of such trusts to apply to said court by petition, setting forth the appropriate facts and asking for the appointment of a new trustee in his place, and a like proceeding shall be had for the appointment of such trustee as in the case of the death of a trustee, as directed in §§ 42-811 and 42-819; provided, that any rule to show cause issued in such case shall be served upon the existing trustee, as provided in said sections.

(b) Notwithstanding the provisions of subsection (a) of this section, and notwithstanding any provision in a deed of trust to the contrary, whenever the grantors named in, and the persons secured by, the deed of trust (or their successors in interest) so desire, they may by written agreement executed and acknowledged in the same manner as an absolute deed substitute any trustee named in the deed of trust with a new trustee. No written instrument entered into pursuant to this subsection shall be effective as to any person not having actual notice thereof until a notice of the appointment of the new trustee signed, sealed, and acknowledged by the parties agreeing to the appointment of the new trustee shall be recorded among the land records in the Office of the Recorder of Deeds.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 538; June 30, 1902, 32 Stat. 532, ch. 1329; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(d); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-714.

1973 Ed., § 45-614.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-815. APPLICATION TO COURT TO FIX TERMS AND DETERMINE NOTICE OF SALE; NOTICE UNDER POWER OF SALE PROVISION.

(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) In the case of a residential mortgage, as a condition of issuance of the notice to foreclose under subsection (c) of this section, a foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument, shall not take place unless the holder of the note secured by the deed of trust, mortgage, or security instrument, or its agent, shall:

(1)(A) Give written notice of default on a residential mortgage, in such format and containing such information as the Mayor shall, by rule, prescribe, by certified mail, postage prepaid, return receipt requested, and by first-class mail, to the borrower and, if different from the borrower, to the person who holds record title, of the real property encumbered by the deed of trust, mortgage, or security instrument at his or her last known address; and

(B) Send a copy of the notice required by subparagraph (A) of this paragraph to the Mayor; and

(2) Obtain a mediation certificate in accordance with § 42-815.02.

(c)(1)(A) A foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument, shall not take place unless the holder of the note secured by the deed of trust, mortgage, or security instrument, or its agent, gives written notice of the intention to foreclose, by certified mail, postage prepaid, return receipt requested, and by first-class mail, of the sale to the borrower and, if different from the borrower, to the person who holds the title of record, of the real property encumbered by the deed of trust, mortgage, or security instrument at his last known address.

(B)(1) A copy of the notice required by subparagraph (A) of this paragraph shall be sent to the Mayor, at least 30 days in advance of the date of the sale.

(2) The notice shall be in such format and contain such information as the Mayor shall, by rule, prescribe.

(3) The Mayor shall give written acknowledgment to the holder of the note, or its agent, on the day that he receives the notice, that the notice has been received, indicating the date of receipt of the notice.

(4) The 30-day period shall commence to run on the date of receipt of the notice by the Mayor.

(5) The notice required by this subsection in regard to the mortgages and deeds of trust shall be in addition to the notice described by subsection (b) of this section.

(d) The mediation certificate required by subsection (b)(2) of this section, and the notice required under subsection (c) of this section, shall be recorded in the land records of the District.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329; Oct. 12, 1968, 82 Stat. 1002, Pub. L. 90-566, § 1; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Mar. 12, 2011, D.C. Law 18-314, § 2(a), 57 DCR 12404.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-715.

1973 Ed., § 45-615.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 18-314 rewrote subsec. (b); and added subsecs. (c) and (d). Prior to amendment, subsec. (b) read as follows:

"(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust, mortgage or security instrument at his last known address, with a copy of said notice being sent to the Mayor of the District of Columbia, or his designated agent, at least 30 days in advance of the date of said sale. Said notice shall be in such format and contain such information as the Council of the District of Columbia shall by regulation prescribe. The 30-day period shall commence to run on the date of receipt of such notice by the Mayor. The Mayor or his agent shall give written acknowledgment to the holder of said note, or its agent, on the day that he receives such notice, that such notice has been received, indicating therein the date of receipt of such notice. The notice required by this subsection in regard to said mortgages and deeds of trust shall be in addition to the notice described by subsection (a) of this section."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

Law 18-314, the "Saving D.C. Homes from Foreclosure Amendment Act of 2010", was introduced in Council and assigned Bill No. 18-691, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 9, 2010, and November 23, 2010, respectively. Signed by the Mayor on December 9, 2010, it was assigned Act No. 18-635 and transmitted to both Houses of Congress for its review. D.C. Law 18-314 became effective on March 12, 2011.

Change in Government

This section originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia (see Acts Relating to the Establishment of the District of Columbia and its Various Forms of Governmental Organization in Volume 1). Section 401 of Reorganization Plan No. 3 of 1967 (see Reorganization Plans in Volume 1) transferred all of the functions of the Board of Commissioners under this section to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, § 711 (D.C. Code, § 1-207.11), abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. Accordingly, and also pursuant to § 714(a) of such Act (D.C. Code, § 1-207.14(a)), appropriate changes in terminology were made in this section.

Delegation of Authority

Delegation of Authority to the Commissioner of the Department of Insurance, Securities and Banking under the Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011, see Mayor's Order 2011-51, March 2, 2011 (58 DCR 2267).

Miscellaneous Notes

Delegation of functions: Organization Order No. 101, Part IV-J, designated the Office of the Recorder of Deeds as the office of record for the receipt, filing, indexing, mailing and handling of notice of foreclosure sale received pursuant to subsection (b) of this section.

§ 42-815.01. RIGHT TO CURE RESIDENTIAL MORTGAGE FORECLOSURE DEFAULT.

(a) For the purposes of this act, the term "residential mortgage" means a loan secured by a deed of trust or mortgage, used to acquire or refinance real property which is improved by 4 or fewer single-family dwellings, including condominium or cooperative units, at least one of which is the principal place of abode of the debtor or his immediate family.

(b) Notwithstanding the provisions of any other law, after a notice of intention to foreclose a residential mortgage has been given pursuant to § 42-815, at any time up to 5 business days prior to the commencement of bidding at a trustee sale or other judicial sale on a residential mortgage obligation, the residential mortgage debtor or anyone in his behalf, not more than 1 time in any 2 consecutive calendar years, may cure his default and prevent sale or other disposition of the real estate, by tendering the amount or performance specified in subsection (c) of this section.

(c) To cure a default under this section, a residential mortgage debtor shall:

- (1) Pay or tender in the form of cash, cashier's check, or certified check all sums, including any reasonable late penalty, required to bring the account current, with the exception of any amounts due by operation of any acceleration clause that may be included in the security agreement;
- (2) Perform any other obligation which he would have been bound to perform in the absence of default or in the absence of the exercise of an acceleration clause, if any; and
- (3) Pay or tender any expenses properly associated with the foreclosure and incurred by the mortgagee to the date of debtor's payment or tender under this section. These costs and expenses may include, but not be limited to, advertising fees, trustee fees, and reasonable attorney's fees.

(d) Cure of a default pursuant to this section restores the residential mortgage debtor to the same position as if the default or the acceleration had not occurred.

(March 3, 1901, 31 Stat. 1274, ch. 854, § 539a, as added May 8, 1984, D.C. Law 5-82, § 2, 31 DCR 1348; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Mar. 12, 2011, D.C. Law 18-314, § 2(b), 57 DCR 12404.)

1981 Ed., § 45-715.1.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 18-314 rewrote subsec. (a), which had read as follows:

"(a) For the purposes of this act, the term 'residential mortgage' means a loan used to acquire or refinance property which is a single family dwelling, including a condominium or cooperative unit, which is the principal place of abode of the debtor or the debtor and his immediate family."

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Section 2(a) of D.C. Law 19-41, in subsec. (a), deleted ", at least one of which is the principal place of abode of the debtor or his immediate family".

Section 4(b) of D.C. Law 19-41 provides that the act shall expire after 225 days of its having taken effect.

Section 2(a) of D.C. Law 19-173, in subsec. (a), deleted "at least one of which is the principal place of abode of the debtor or his immediate family".

Section 4(b) of D.C. Law 19-173 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2011 (D.C. Act 19-147, August 9, 2011, 58 DCR 6828).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2012 (D.C. Act 19-378, June 15, 2012, 59 DCR 7380).

For temporary (90 day) amendment of section, see § 2(a) of Saving D.C. Homes from Foreclosure Enhanced Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-493, October 26, 2012, 59 DCR 12722).

Legislative History of Laws

Law 5-82, the "Right to Cure a Residential Mortgage Foreclosure Default Act of 1984," was introduced in Council and assigned Bill No. 5-187, which was referred to the Committee on Housing and Economic Development. The Bill was adopted on first and second readings on February 14, 1984, and February 28, 1984, respectively. Signed by the Mayor on March 15, 1984, it was assigned Act No. 5-118 and transmitted to both Houses of Congress for its review.

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

For history of Law 18-314, see notes under § 42-815.

References in Text

This act, referred to in subsection (a), is the Act of March 3, 1901, Chapter 854.

§ 42-815.02. FORECLOSURE MEDIATION.

(a) For the purposes of this section, the term:

(1) "Borrower" means a residential mortgage borrower and, if different from the residential mortgage

borrower, the person who holds record title.

(2) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking.

(3) "Lender" means a residential mortgage lender. The term "lender" shall include a trustee.

(4) "Loss mitigation analysis" means an analysis, performed by the lender, of a borrower's financial condition, using information in the borrower's loss mitigation application and any other information available to the lender, to evaluate and recommend options in lieu of foreclosure available to borrower from the lender.

(5) "Mediation" means a meeting between lender or trustee and the borrower, with the help of a neutral third-party mediator appointed by the Mediation Administrator, to attempt to reach agreement on a loss mitigation program for the borrower, including the renegotiation of the terms of a borrower's residential mortgage, loan modification, refinancing, short sale, deed in lieu of foreclosure, and any other options that may be available in lieu of foreclosure.

(6) "Mediation Administrator" means an individual designated by the Commissioner to administer mediation services under this section.

(7) "Mediation certificate" means a document issued by the Commissioner to a lender evidencing compliance with the mediation requirements of this act.

(8) "Mediation election form" means a form, prescribed by the Commissioner, upon which the borrower may elect to participate in mediation and certify compliance with the lender's loss mitigation documentation requirements.

(9) "Mediation report" means a summary of the mediation provided by the mediator to the Mediation Administrator on a form prescribed by the Commissioner.

(10) "Mortgage" means a lien instrument, including a mortgage or deed of trust, with at least 2 parties, in which the borrower grants a lien on residential real property to the lender as security for the repayment of a note or loan.

(11) "Notice of default on residential mortgage" means a notice given pursuant to § 42-815(b)(1), in the form that the Mayor shall, by rule, prescribe, which shall contain:

(A) The name and telephone number of the lender;

(B) The following loan information:

(i) The amount of the principal balance and outstanding interest owed;

(ii) All past due payments;

(iii) Penalties; and

(iv) The amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees; and

(C) Any other information that the Mayor shall, by rule, prescribe.

(12) "Notice of intention to foreclose a residential mortgage" means a notice given pursuant to § 42-815(c).

(13) "Power of sale" means the right of a lender to sell residential real property after an uncured default at a public auction as provided in this act to repay the note or other obligation secured by a deed of trust or mortgage.

(14) "Residential mortgage" shall have the same meaning as in § 42-815.01(a).

(15) "Settlement agreement" means the form, prescribed by the Mediation Administrator, upon which the terms and conditions of an agreement made pursuant to the mediation are set forth.

(16) "Trustee" means the person holding a lien on real property pursuant to a residential mortgage or the assignee for foreclosure of the residential mortgage.

(b) Notwithstanding the provisions of any other law, after a notice of default of a residential mortgage has been given pursuant to § 42-815(b)(1), the lender shall engage in mediation if the borrower elects under subsection (c) of this section. Prior to the foreclosure of any residential mortgage or deed of trust, a lender shall:

(1) Include with the notice of default on a residential mortgage which is mailed to the borrower pursuant to § 42-815(b)(1):

(A) Contact information which the borrower may use to reach an agent or representative of the lender with authority to explain the mediation process;

(B) A statement recommending that the borrower seek housing counseling services;

(C) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(D)(i) A description of all loss mitigation programs available from the lender and applicable to the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) A description of the eligibility requirements for the loss mitigation programs applicable to the residential mortgage subject to the notice of default of a residential mortgage for these programs;

(E)(i) An application in the form that the Mayor, by rule, shall prescribe, for the loss mitigation programs available in connection with the residential mortgage subject to the notice of default of a residential mortgage; and

(ii) Instructions for completing and mailing the loss mitigation application, with one envelope addressed to the lender; and

(F) A mediation election form, in a form prescribed by the Mediation Administrator, with one envelope addressed to the lender, and one envelope addressed to the Mediation Administrator; and

(2) Provide a copy of the notice of default on a residential mortgage to the Mediation Administrator in accordance with the rules issued pursuant to subsection (i) of this section.

(c)(1) No later than 7 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail the following to the borrower:

(A) A statement that the borrower is subject to foreclosure and must take immediate action to avoid foreclosure;

(B) A statement that the borrower is eligible to participate in foreclosure mediation;

(C) The contact information for the Mediation Administrator and a statement instructing that the borrower should immediately contact the Mediation Administrator to obtain additional information;

(D) A statement recommending that the borrower seek housing counseling services;

(E) Contact information for at least one local housing counseling agency approved by the United States Department of Housing and Urban Development;

(F) A statement recommending that the borrower review the mediation election form and the loss mitigation application provided by the lender;

(G) A request for the borrower immediately to contact the Mediation Administrator and the lender if the borrower has not received a loss mitigation application and mediation election form from the lender;

(H) A request for the borrower to return the mediation election form to the Mediation Administrator and the lender, in the envelopes provided, no later than 30 days from the date of the mailing of the form required by subsection (b) of this section;

(I) A request for the borrower to return the loss mitigation application to the lender, in the envelope provided, no later than 30 days after the date of the mailing of the form required by subsection (b) of this section;

(J) A statement that the borrower will lose the right participate in mediation if the mediation election form and the loss mitigation application are not returned within the stipulated 30-day time period;

(K) A statement that the borrower has to pay a \$50 fee payable to the District to participate in mediation; and

(L) A statement that mediation will be held 45 days after the date of the mailing of the form required by subsection (b) of this section.

(2) No later than 20 days after the date of the mailing of the form required by subsection (b) of this section, the Mediation Administrator shall mail to the borrower:

(A) The information specified in paragraph (1) of this subsection;

(B) A statement that the mailing is a 2nd notice and that the borrower must take immediate action to avoid foreclosure.

(d)(1) To participate in mediation, no later than 30 days after the mailing of the notice of default on a residential mortgage and information required by subsection (b) of this section, a borrower shall return the mediation election form and a \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender. A borrower shall forfeit the right to mediation if the borrower does not return the mediation election form and the \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender, within 30 days after the mailing of the notice of default on a residential mortgage.

(2) For each borrower electing to participate in mediation, the Mediation Administrator shall schedule a mediation session to commence no later than 45 days after the mailing of the notice of default on a residential mortgage.

(3) If the borrower elects to waive mediation by not paying the \$50 fee or by not returning the mediation

election form or the loss mitigation application within 30 days after the mailing of the notice of default on a residential mortgage, the Mediation Administrator shall issue a mediation certificate to the lender no earlier than 45 days, but no later than 60 days, after the mailing of the form required by subsection (b) of this section. The power of sale under a mortgage shall not be exercised until the Mediation Administrator has issued a mediation certificate.

(e)(1) Each mediation required by this section shall be conducted by a mediator appointed in accordance with rules issued pursuant to subsection (i) of this section. The lender, or a representative, and the borrower, or a representative, shall attend the mediation. The lender, or its representative, shall bring to the mediation the results of its loss mitigation analysis, a true copy of the mortgage, including the mortgage note or agreement, every assignment of the mortgage, evidence proving that the lender has standing to commence foreclosure against the borrower, and any other information required pursuant to the rules issued under subsection (i) of this section. If a representative of the lender, or the borrower, attends the mediation, the representative shall:

(A) Have authority to:

- (i) Address loss mitigation programs that may be available to the borrower;
- (ii) Renegotiate the terms of the residential mortgage, including a loan modification; and
- (iii) Negotiate any other options that may be available in lieu of foreclosure; or

(B) Have access at all times during the mediation to a person with such authority.

(2)(A) The lender shall be subject to civil penalties payable to the District as follows:

- (i) If the lender, or a representative, fails to attend the mediation, a penalty of \$500 shall be imposed;
- (ii) If the lender, or a representative, fails to bring to the mediation each document required by this subsection, a penalty of \$500 shall be imposed; or
- (iii) If the lender, or a representative, fails to participate in the mediation in good faith, a penalty of \$500 shall be imposed.

(B) Penalties shall be enforceable by an action in the Superior Court of the District of Columbia.

(C) If the borrower fails to attend a scheduled mediation session without good cause shown, no later than 10 days after the scheduled mediation session missed by the borrower, the Mediation Administrator shall issue a mediation certificate to the lender.

(3) If the mediator determines that the parties, while acting in good faith, are not able to agree to a loan modification or to any other options in lieu of foreclosure, no later than 5 days after the mediation session at which the parties were not able to reach an agreement, the mediator shall prepare and submit to the Mediation Administrator, on a form prescribed by the Commissioner, a recommendation that the matter be terminated. After reviewing and considering the mediator's report and any recommendations therein, no later than 5 days after receiving the mediator's report, the Mediation Administrator may issue a mediation certificate to the lender or refer the matter to another mediator.

(4) If the parties enter a settlement agreement:

(A)(i) If the lender breaches the terms of the settlement agreement entered into during mediation, the lender shall pay a penalty of \$ 1,000 and shall be required to perform the terms of a settlement agreement.

(ii) This penalty shall be enforceable by an action in the Superior Court of the District of Columbia.

(B)(i) If the borrower breaches the terms of the settlement agreement entered into during mediation, the lender shall apply to the Mediation Administrator for a mediation certificate.

(ii) Upon receipt of the lender's application for a mediation certificate due to the borrower breaching the terms of the settlement agreement, no later than 10 days after the receipt of the application, the Mediation Administrator may issue a mediation certificate to the lender, the issuance of which shall not be unreasonably withheld.

(5) Mediation shall be concluded within 90 days of the mailing of the form required by subsection (b) of this section, unless extended for an additional 30 days by the mutual consent of both parties.

(f) The lender shall pay a fee of \$300 for each notice of default on a residential mortgage issued. If the power of sale for a property is exercised, the lender may recover the \$300 fee from the proceeds of sale if there is any amount remaining after the payment of all amounts due and owing by the borrower on the residential mortgage and the costs of the sale. The lender shall not be permitted to recover mediation fee paid if there is a deficiency upon the sale of the foreclosed property.

(g) The Mediation Administrator and each mediator who acts in good faith and without gross negligence pursuant to this section shall be immune from civil liability for those acts.

(h) Each foreclosure sale in violation of this act shall be void.

(i) Chapter 3A of Title 2, or any successor act, shall not apply to any contract that the Mediation Administrator may enter into with mediators for the performance of mediation services.

(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, shall issue rules to implement the provisions of this section. The rules shall include provisions:

- (1) Ensuring that mediations occur in an orderly and timely manner;
- (2) Requiring each party to a mediation to provide such information as the Mediation Administrator determines to be necessary;
- (3) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith; and
- (4) Establishing procedures relating to the appointment of each mediator, the training and qualification requirements for each mediator, and the compensation to be paid to each person serving as a mediator.

(k) The participation in mediation shall not waive any other legal claims that the lender or borrower may have against each other.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539b, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404; Sept. 26, 2012, D.C. Law 19-171, §§ 101, 227, 59 DCR 6190.)

HISTORICAL AND STATUTORY NOTES

Effect of Amendments

D.C. Law 19-171 validated previously made technical corrections in subsection designations; and, in subsec. (i), substituted "Chapter 3A of Title 2" for "Unit A of Chapter 3 of Title 2".

Temporary Amendments of Section

Section 2(b) of D.C. Law 19-41 designated the second subsec. (e) as subsec. (f); redesignated subsecs. (f) to (i) as subsecs. (g) to (j); repealed the newly designated subsec. (h); and added subsecs. (h-1) to (h-4) to read as follows:

"(h-1) A foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate.

"(h-2) A borrower shall have the same rights to assert claims for a defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage.

"(h-3) Except as provided for in subsections (h-1) and (h-2) of this section, a mediation certificate shall serve as conclusive evidence that all other provisions of the act and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender or assigns.

"(h-4) Nothing in this act shall be construed to limit a borrower's right to assert a claim for fraud or monetary damages against the borrower's lender."

Section 4(b) of D.C. Law 19-41 provides that the act shall expire after 225 days of its having taken effect.

Section 2(b) of D.C. Law 19-173 designated the second subsecs. (e) to (i) as subsecs. (f) to (j); repealed the newly designated subsec. (h); and added subsecs. (h-1) to (h-3) to read as follows:

"(h-1) A foreclosure sale of property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate.

"(h-2) A borrower shall have the same rights to assert a claim for a defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage.

"(h-3) Except as provided in subsections (h-1) and (h-2) of this section, a mediation certificate shall serve as conclusive evidence that all other provisions of this act and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender or assigns.

"(h-4) Nothing in this act shall be construed to limit a borrower's right to assert a claim for fraud or monetary damages against the borrower's lender.".

Section 4(b) of D.C. Law 19-173 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2011 (D.C. Act 19-147, August 9, 2011, 58 DCR 6828).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Enhanced

Emergency Amendment Act of 2012 (D.C. Act 19-378, June 15, 2012, 59 DCR 7380).

For temporary (90 day) amendment of section, see § 2(b) of Saving D.C. Homes from Foreclosure Enhanced Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-493, October 26, 2012, 59 DCR 12722).

Legislative History of Laws

For history of Law 18-314, see notes under § 42-815.

Law 19-171, the "Technical Amendments Act of 2012", was introduced in Council and assigned Bill No. 19-397, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on March 20, 2012, and April 17, 2012, respectively. Signed by the Mayor on May 23, 2012, it was assigned Act No. 19-376 and transmitted to both Houses of Congress for its review. D.C. Law 19-171 became effective on September 26, 2012.

References in Text

This act, referred to in subsecs. (a)(7) and (h), is the Act of March 3, 1901, Chapter 854.

§ 42-815.03. ESTABLISHMENT OF FORECLOSURE MEDIATION FUND.

(a) There is established as a nonlapsing fund the Foreclosure Mediation Fund ("Fund"), which shall be used solely to pay the costs of the administration of the foreclosure mediation established by § 42-815.02. The Mayor shall deposit in the Fund all fees and penalties generated pursuant to the foreclosure mediation program.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (a) of this section, subject to authorization by Congress.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539c, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404.)

HISTORICAL AND STATUTORY NOTES

Temporary Amendments of Section

Section 2(c) of D.C. Law 19-173 rewrote subsec. (a) to read as follows:

"(a) There is established as a nonlapsing fund the Foreclosure Mediation Fund ('Fund'), into which shall be deposited the fees and penalties generated by the foreclosure mediation program, the District's share of proceeds from the February 2012 consent judgments between the federal government and participating states, and any future designated settlements or funds. The February 2012 consent judgments are with Citibank, Wells Fargo, Ally Financial as successor of GMAC, Bank of America, and J.P. Morgan Chase.

"(b) The Fund shall be used for one or more of the following purposes:

"(1) Payment of mortgage-related or foreclosure-related counseling;

"(2) Mortgage-related or foreclosure-related legal assistance or advocacy;

"(3) Mortgage-related or foreclosure-related mediation;

"(4) Outreach or assistance to help current and former homeowners secure the benefits for which they are eligible under mortgage-related or foreclosure-related settlements or judgments; and

"(5) Enforcement work in the area of financial fraud or consumer protection."

Section 4(b) of D.C. Law 19-173 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Emergency Amendment Act of 2010 (D.C. Act 18-599, November 17, 2010, 57 DCR 11026).

For temporary (90 day) addition of section, see § 2(c) of Saving D.C. Homes from Foreclosure Congressional Review Emergency Amendment Act of 2011 (D.C. Act 19-8, February 11, 2011, 58 DCR 1418).

For temporary (90 day) amendment of section, see § 2(c) of Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2012 (D.C. Act 19-378, June 15, 2012, 59 DCR 7380).

For temporary (90 day) amendment of section, see § 2(c) of Saving D.C. Homes from Foreclosure Enhanced Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-493, October 26, 2012, 59 DCR 12722).

Legislative History of Laws

For history of Law 18-314, see notes under § 42-815.

§ 42-816. SALE OF PROPERTY--DEFICIENCY JUDGMENTS; LIMITATIONS THEREON; RELIEF IN SUIT TO ENFORCE VENDOR'S LIEN.

In all cases of application to said court to foreclose any mortgage or deed of trust, the equity court shall have authority, instead of decreeing that the mortgagor be foreclosed and barred from redeeming the mortgaged property, to order and decree that said property be sold and the proceeds be brought into court to be applied to the payment of the debt secured by said mortgage; and if, upon a sale of the whole mortgaged property, the net proceeds shall be insufficient to pay the mortgage debt, the court may enter a decree in personam against the mortgagor or other party to the suit who is liable for the payment of the mortgage debt for the residue of said debt remaining unsatisfied after applying to said debt the proceeds of such sale; provided, that the complainant would be entitled to maintain an action at law or suit in equity for said residue; which decree shall have the same effect and be enforced by execution in the same manner as a judgment at law. And in suits to enforce a vendor's lien on real estate for unpaid purchase money similar relief may be given by a decree of sale and a decree in personam for the unsatisfied residue of the purchase money due.

(Mar. 3, 1901, 31 Stat. 1204, ch. 854, § 95; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-716.

1973 Ed., § 45-616.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-817. SALE OF PROPERTY--AMOUNT CREDITOR TO PAY IF PURCHASER.

If a creditor, for the payment of whose debt property shall be sold under a deed of trust, shall become the purchaser at such sale, he shall be entitled to credit the amount of the purchase money against the debt, and shall be only required to pay to the trustee the excess of the purchase money over his debt, together with such additional amount as may be necessary to defray the expenses of the sale.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 544; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-717.

1973 Ed., § 45-617.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-818. COMMISSION TO MORTGAGEE OR TRUSTEE; RATES; WHEN ADVERTISED SALE NOT HELD.

(a) Among the lawful expenses of a sale under a mortgage or deed of trust is to be allowed a commission on the proceeds of sale to the mortgagee or trustee. Where the mortgage or deed of trust does not fix the rate of commission the mortgagee or trustee shall be allowed a commission of 5% on the first \$500 and 3% on the balance of the purchase money actually paid by the purchaser at any sale, and 1 /2% on the amount of the purchase money not paid into the hands of the mortgagee or trustee, but credited on the debt, when the creditor becomes a purchaser.

(b) When the property is lawfully advertised for sale under a mortgage or deed of trust, and the sale is prevented by payment of the debt or is suspended or postponed by arrangement between the parties interested, the trustee shall be entitled to a commission of 1% on the amount of the debt secured in addition to the expenses incurred by him, and he shall be entitled to such allowance as often as such advertisement shall be made necessary by the default of the debtor; provided, that if a sale shall actually take place under any such advertisement, he shall not be entitled to more than 1 such allowance in addition to his commission on the proceeds of an actual sale.

(Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 545; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-718.

1973 Ed., § 45-618.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-818.01. TRACKING ADDRESSES.

Every deed of trust or substitution of trustee offered for recordation shall have the name and address of each party to the deed of trust or substitution of trustee typed or printed directly above or below the signature of the party. Deeds of trust or substitution of trustee submitted without both the name and address of each person will not be recorded.

(March 3, 1901, 31 Stat. 1271, § 545a, as added Apr. 29, 1998, D.C. Law 12- 86, § 701, 45 DCR 1172.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-718.1.

Legislative History of Laws

Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 42-818.02. PROCEDURES FOR RELEASE OF DEED OF TRUST.

(a) For purposes of this section, the term:

- (1) "Ancillary security instrument" means an assignment of leases with respect to the real property described in a deed of trust, an assignment of rents from or arising out of the real property described in a deed of trust, a financing statement filed in the financing statement records in the Office of the Recorder of Deeds of the District of Columbia with respect to fixtures on real property described in a deed of trust, and any other document or instrument that assigns, or creates a lien on, an interest in the real property described in a deed of trust as security for a promissory note.
- (2) "Deed of trust" means a mortgage or a deed of trust encumbering real property located in the District of Columbia as the same may be modified, amended, supplemented, or restated.
- (3) "Land records" means the land records in the Office of the Recorder of Deeds of the District of Columbia.
- (4) "Promissory note" means a promissory note or other written evidence of indebtedness or obligation secured by a deed of trust.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, if (i) a deed of trust is not released as a lien on the real property described therein within a period of 12 years after the maturity date of the obligation secured by the deed of trust, or (ii) no determinable maturity date is recited in the deed of trust and 35 years have elapsed since the date of recordation of the deed of trust among the land records (or, if the deed of trust has been modified or extended, the last recorded modification or extension), then the promissory note secured by the deed of trust shall be deemed conclusively to have been paid and satisfied. The deed of trust shall, without any action on the part of the owner or other person having an interest in the real property described in the deed of trust, be deemed to have been automatically released as of the last day of the period referred to in clause (i) or (ii) of this paragraph, as the case may be, and the deed of trust shall no longer constitute a lien on, or be enforceable against, the real property described therein.

(2) Paragraph (1) of this subsection shall not apply if:

- (A) A Notice of Foreclosure with respect to a deed of trust has been recorded among the land records within 60 days before the expiration of the applicable time period referred to in (i) or (ii) of paragraph (1) of this subsection, or (ii) as of the last day of the applicable time period referred to in clause (i) or (ii) of paragraph (1) of this subsection, a proceeding to enforce the lien of a deed of trust is pending in a court of competent jurisdiction.

(c) A deed of trust may be validly released as a lien on real property in the District of Columbia by any one of the following means:

- (1)(A) A deed of trust securing a lost, misplaced or destroyed promissory note which has been fully paid and satisfied may be released as a lien on the real property described therein by recording an affidavit among the Land Records. The affidavit, which shall be executed by the holder of the lost, misplaced or destroyed promissory note, or by the trustee or trustees named in the original deed of trust or subsequently appointed by a recorded instrument of substitution, shall state that (i) the

promissory note has been fully paid and satisfied, (ii) the original promissory note has been lost, misplaced, or destroyed and, if the affiant is the holder of the promissory note, neither the promissory note nor any interest therein has been transferred, assigned, or negotiated to any other person, (iii) the affiant has been unable to locate the promissory note despite a diligent search, and (iv) the affiant release the deed of trust identified by recording reference, as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the affidavit shall be effective to release the deed of trust as a lien on the real property described therein with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(2)(A) A deed of trust may be released as a lien on the real property described therein by recording the original promissory note, marked "paid" or "canceled" on its face by the holder, among the land records with an attached affidavit executed by the holder, or by an officer of the title insurance company or validly licensed title insurance agent which disbursed funds in payment of the promissory note, stating that the promissory note has been fully paid or satisfied and releasing the deed of trust as a lien on the real property described in the deed of trust.

(B) The affidavit shall fully identify the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released. The recordation of the original promissory note with the required affidavit attached shall be effective to release the deed of trust as a lien on the real property with the same effect as a release recorded pursuant to paragraph (3) of this subsection.

(3) A deed of trust may be released as a lien on the real property described therein by recording a certificate of satisfaction executed by the beneficiary, mortgagee, assignee, or trustee fully identifying the real property encumbered by, the parties to, the date of, and the recording reference for, the deed of trust being released, and stating that the deed of trust is released as a lien on the real property described therein, or, if the deed of trust is being released as a lien on less than all of the real property described therein, describing the part of the real property then being released.

(d) A certificate of satisfaction shall comply with the requirements of subsection (c)(3) of this section, shall be acknowledged in the manner required for the acknowledgement of a deed, and shall be in the following form:

CERTIFICATION OF SATISFACTION

KNOW ALL BY THESE PRESENTS:

That (name, title), representing (beneficiary), does hereby certify and acknowledge, under penalties of perjury, that the promissory note or other evidence of indebtedness secured by that certain mortgage/deed of trust made by _____ to _____, mortgage/trustee(s), dated _____ and recorded _____ as Instrument No. ____ among the Land Records of the District of Columbia, which encumbers the real property described in Exhibit A attached hereto, has been fully paid and satisfied and that _____ was, at the time of satisfaction, the holder of the promissory note or other evidence of indebtedness and that the lien of the said mortgage/deed of trust is hereby released.

The property encumbered by said mortgage/deed of trust is described as follows:

WITNESS the hand and seal of the party making this certification this ____ day of _____, ____.

(ACKNOWLEDGMENT)

(e)(1) If a promissory note is paid or satisfied in full, the holder shall, within 30 days after receipt of such payment or within 30 days after such satisfaction, execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, to the person making such payment or causing such promissory note to be satisfied, one or more of the documents, instruments and affidavits, in one of the forms permitted by subsection (c) of this section, sufficient to release the deed of trust securing such promissory note as a lien against the real property described in the deed of trust.

(2) If a promissory note is paid or satisfied in part, and if by the terms of the promissory note, the deed of trust securing the promissory note or a separate agreement between the parties, the person making such partial payment or causing such partial satisfaction to be made is entitled to a release of a part of the real property encumbered by the lien of the deed of trust, the holder of the promissory note shall comply with the provisions of subsection (c)(3) of this section in the same manner as if the promissory note were paid or satisfied in full, except that the release shall apply only to the part of the real property encumbered by the lien of the deed of trust which the holder is obligated, by the terms of the promissory note, the deed of trust or the separate agreement, to release on account of such partial payment or satisfaction.

(3) If a holder of a promissory note secured by a deed of trust fails to execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, the documents, instruments, or affidavits required to release the deed of trust, in whole or in part, within the time, and in the manner,

required by paragraph (1) or (2) of this subsection, and if the holder's failure continues for more than 30 days after the holder receives a written request therefor from the person entitled to the release or such person's agent, then holder shall pay to the person entitled to the release a penalty in the amount of \$50 per day, shall be liable to such person for all actual and consequential damages caused by the holder's failure timely to deliver or record the full or partial release, and shall pay or reimburse such person for all costs and expenses, including reasonable attorneys fees and disbursements, relating to or arising out of the enforcement of such person's rights under this section. The penalty of \$50 per day shall be payable for the period beginning on and including the 31st day after the holder receives a written request for the release to, but not including, the day on which the holder delivers the executed and acknowledged documents, instruments or affidavits required to release the deed of trust.

(4) For purposes of this subsection, (i) a payment in the form of an electronic transfer of immediately available funds to an account in a commercial bank, a savings bank, a savings and loan association, a credit union or a similar financial institution shall be deemed to be made when the financial institution confirms receipt of the funds to the owners of the account, (ii) a payment in the form of a check issued or certified by a national or state bank shall be deemed to be made upon receipt of the check, and (iii) payment in the form of a check that is not issued or certified by a national or state bank shall be deemed to be made on the first day on which the holder receives the proceeds of collection of such check in immediately available funds.

(f) If a deed of trust is released, or deemed released, as a lien on all of the real property described therein, the release of the deed of trust shall be deemed automatically to release any ancillary security instrument that secures the same promissory note secured by the deed of trust. This provision shall not apply if the document recorded among the land records expressly states that the release of the deed of trust shall not release the ancillary security instrument.

FORM OF RELEASE AFFIDAVIT FOR LOST, MISPLACED, OR DESTROYED PROMISSORY NOTE PER

§ 45-721(C)(1):

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I was the last known holder of a certain promissory note (or the trustees named in the original deed of trust or substitute trustees appointed by an instrument of substitution recorded in the land records);

2. Despite diligent search, I have been unable to locate the original promissory note which has been lost, misplaced or destroyed, (if the holder add: and neither the promissory note nor any interest therein has been transferred, assigned or negotiated to any other person);

3. The promissory note has been fully paid and satisfied; and

4. The deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustee(s)) securing (grantee) and recorded in the land records on (date) in Liber , at Folio , as instrument no. and constituting a lien upon that piece or parcel of land located in the District of Columbia and known as:

LOT in SQUARE , (additional legal description, ex. subdivision) as per plat recorded in Liber at Folio among the land records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this day of , .

STATE/DISTRICT of)

) ss:

COUNTY of)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that , party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the day of , , personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this day of , and:

My commission expires:

Notary Public

FORM OF RELEASE AFFIDAVIT

TO ACCOMPANY PROMISSORY NOTE § 45-721(2):

KNOW ALL MEN BY THESE PRESENTS:

THAT I, the undersigned, hereby certify under penalties of perjury that:

1. I am [the last known holder of the attached promissory note marked ["Paid" or "canceled"] or [an officer of the undersigned title insurance company] or [a validly licensed title insurance agent] which disbursed funds in payment of the promissory note;

2. the attached promissory note has been fully paid, canceled or satisfied; and

3. the deed of trust dated (date) securing said promissory note granted by (grantor) in favor of (trustees) securing (grantee) and recorded in the Land Records on (date) in Liber ____, at Folio ____, as instrument no. ____ and constituting a lien upon that piece or parcel of land located in the District of Columbia and known as:

LOT ____ in SQUARE ____, (additional legal description, ex. subdivision) as per plat recorded in Liber ... at Folio ... among the Land Records is hereby RELEASED.

WITNESS the hand and seal of the undersigned [noteholder/trustee/substitute trustee] this ____ day of _____, ____.

STATE/DISTRICT of _____)

) ss.

COUNTY of _____)

I, the undersigned, a Notary Public in and for the aforesaid do hereby certify that _____ party to and who is personally well known to me as the person who executed the foregoing Release Affidavit dated the ____ day of _____, ____, personally appeared before me in said jurisdiction and acknowledged the same to be his/her/its act and deed.

Given under my hand and seal, this ____ day of _____, and:

My commission expires:

Notary Public.

(March 3, 1901, 31 Stat. 1271, § 545b, as added Apr. 29, 1998, D.C. Law 12- 86, § 701, 45 DCR 1172.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-718.2.

Legislative History of Laws

For legislative history of D.C. Law 12-86, see Historical and Statutory Notes following § 42-818.01.

References in Text

Section 45-721, referred to in the Forms of Release Affidavit, did not exist in the 1981 Edition at the time of the recodification into the 2001 Edition.

§ 42-819. PETITION FOR DEED OF RELEASE AFTER DEATH OF MORTGAGEE OR TRUSTEE; PROCEDURE; SUMMARY DETERMINATION.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in the court having probate jurisdiction, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devisees of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party cannot be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to § 42-814(b) and the execution of a deed of release by such new trustee.

(Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 130, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89-706, § 1(c); July 29, 1970, 84 Stat. 576, Pub. L. 91-358, title I, § 158(c)(2); Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-719.

1973 Ed., § 45-619.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

Temporary Amendments of Section

For temporary (225 day) amendment of section, see § 2 of Protections from Predatory Lending and Mortgage Foreclosure Improvements Temporary Amendment Act of 2001 (D.C. Law 14-86, March 19, 2002, law notification 49 DCR 2991).

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

§ 42-820. CONVEYANCE BY AND FOR INDIVIDUALS WITH MENTAL DISABILITIES FOLLOWING COURT ORDER.

It shall and may be lawful to and for any person or persons with an intellectual disability or mental illness or *non compos mentis*, or for the committee or committees of such person or persons, in his, her, or their name or names, by the direction of the chancellor, signified by an order made, upon hearing all parties concerned, on the petition of the person or persons, for whom such person or persons with an intellectual disability or mental illness or *non compos mentis*, shall be seized or possessed in trust, or of the mortgagor or mortgagors, or of the person or persons entitled to the monies secured by or upon any lands, tenements, or hereditaments, whereof any such person or persons with an intellectual disability or mental illness or *non compos mentis*, is or are, or shall be seized or possessed by way of mortgage, or of the person or persons entitled to the redemption thereof, to convey and assure any such lands, tenements, or hereditaments, in such manner as the chancellor shall, by such order so to be obtained, direct, to any other person or persons; and such conveyance or assurance, so to be had and made as aforesaid, shall be as good and effectual in law, to all intents and purposes whatsoever, as if the said person or persons with an intellectual disability or mental illness or *non compos mentis*, was or were, at the time of the making such conveyance or assurance, of sane mind, memory, and understanding, and without an intellectual disability or mental illness or *non compos mentis*, or had by him, her, or themselves executed the same. All and every person and persons with an intellectual disability or mental illness or *non compos mentis*, and only trustee or trustees, mortgagee or mortgagees, as aforesaid, or the committee and committees of all and every such person and persons with an intellectual disability or mental illness or *non compos mentis*, and only such trustee or mortgagee as aforesaid, shall and may be empowered and compelled, by such order so as aforesaid to be obtained, to make such conveyance or conveyances, assurance or assurances, as aforesaid, in like manner as trustees or mortgagees of sane memory are compellable to convey, surrender, or assign their trust estates or mortgages.

(4 Geo. 2, ch. 10, §§ 1, 2, 1731; Kilty's Rep. 249; Alex. Br. Stat. 700; Comp. Stat. D.C., p. 78, § 11; Apr. 3, 2001, D.C. Law 13-263, § 1601, 48 DCR 991; May 7, 2002, D.C. Law 14-132, § 602(b), 49 DCR 1552; Apr. 24, 2007, D.C. Law 16-305, § 58, 53 DCR 6198; Sept. 26, 2012, D.C. Law 19-169, § 26(a), 59 DCR 5567.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 45-720.

1973 Ed., § 45-620.

Effect of Amendments

D.C. Law 14-132 revived this section as of November 6, 2001. This section had been previously repealed by D.C. Law 13-263, § 1601.

D.C. Law 16-305, in the section heading, substituted "individuals with mental disabilities" for "mentally handicapped"; substituted "persons with mental retardation or mental illness or non compos mentis" for "persons being idiot, lunatic, or non compos mentis" and substituted "without mental retardation or mental illness or non compos mentis" for "not idiot, lunatic, or non compos mentis".

D.C. Law 19-169 substituted "an intellectual disability" for "mental retardation".

Emergency Act Amendments

Section 2 of Act 14-188, the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Emergency Amendment Act", deemed approved Nov. 27, 2001, without the signature of the Mayor, provided that D.C. Law 13-263 shall not apply beginning November 6, 2001, through March 6, 2002.

For temporary (90 day) revival of section, see § 403(b) of Home Loan Protection Emergency Act of 2002 (D.C. Act 14-295, March 1, 2002, 49 DCR 2534).

Legislative History of Laws

For Law 13-263, see notes following § 42-831.01.

For Law 14-132, see notes following § 42-801.

Law 16-305, the "People First Respectful Language Modernization Act of 2006", was introduced in Council and assigned Bill No. 16-664, which was referred to Committee on the Whole. The Bill was adopted on first and second readings on June 20, 2006, and July 11, 2006, respectively. Signed by the Mayor on July 17, 2006, it was assigned Act No. 16-437 and transmitted to both Houses of Congress for its review. D.C. Law 16-305 became effective on April 24, 2007.

Law 19-169, the "People First Respectful Language Modernization Amendment Act of 2012", was introduced in Council and assigned Bill No. 19-189, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on March 6, 2012, and April 17, 2012, respectively. Signed by the Mayor on May 15, 2012, it was assigned Act No. 19-361 and transmitted to both Houses of Congress for its review. D.C. Law 19-169 became effective on September 26, 2012.