

**AN ACT**

*Codification  
District of  
Columbia  
Code  
2001 Supp.*

**IN THE COUNCIL OF THE DISTRICT OF COLUMBIA**

To enact a new mortgage law for the District of Columbia which will clarify the status of deeds of trust and mortgages by changing and redefining certain common law and existing case law relating to mortgages, deeds of trust, foreclosure, the conduct of residential lending activities and the relationships among various persons in real property financing transactions; codify a loan and foreclosure process that is definite, fair, inclusive, and improved for all affected persons; provide residential property owners with additional protection from predatory lending practices including an expedited judicial review of certain residential loans for predatory lending practices prior to foreclosure; auditing of all foreclosure sales for compliance with procedures and proper allocation of the foreclosure sale proceeds; and expand the District of Columbia's real property financing laws to include significant portions of the Restatement of the Law Third of Property (Mortgages) as adopted May 14, 1996 by the American Law Institute.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000".

**TITLE I. DEFINITIONS**

Sec. 101. Definitions.

For the purposes of this act, the term:

(1) “Affiliate” means any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) “Ancillary lien instrument” means an assignment of leases with respect to the real property described in a lien instrument, an assignment of rents from or arising out of the real property described in a lien instrument, a security agreement or a financing statement filed in the financing statement or land records in the office of the Recorder of Deeds with respect to fixtures on or other interests in real property described in a security agreement, and any other document or instrument that assigns, or creates a lien on an interest in the real property described in a lien instrument as security for a note.

(3) “Assessed value” means the full market value of real property for assessment and taxation purposes as determined by the Office of Tax and Revenue and in effect on the applicable date.

(4) “Assignee for foreclosure” means the attorney or person to whom a mortgage or security agreement is assigned for the limited purpose of enforcing such mortgage or security agreement by foreclosure or other means and who performs functions similar to those of the trustee in a foreclosure of a deed of trust.

(5) “Assumption of liability” means an express promise by the transferee of real property encumbered by a lien instrument, whether made to the transferor or to the noteowner, to perform the obligation secured by the lien instrument.

(6) “Auditor” means the person designated by the Mayor to prepare the foreclosure procedure report or auditor’s report for a foreclosure sale.

(7) “Basis point” means one one-hundredth of one percent (0.01%) when referring to a portion of a loan amount.

(8) “Beneficiary” means the noteowner or noteowner’s agent or loan servicer secured by a deed of trust, the mortgagee secured by a mortgage, or the obligee under an obligation secured by a lien instrument.

(9) “Borrower” means the original maker of, and all other persons personally liable on, the note secured by the lien instrument, or the original mortgagor and all other persons personally liable on a mortgage, or the original obligor and all other persons personally liable on an obligation secured by a lien instrument.

(10) “Deed of trust” means a lien instrument with at least 3 parties in which the borrower or owner grants a lien on real property to the trustee for the benefit of the beneficiary as security for the repayment of a note or performance of an obligation. The terms “deed of trust” and “mortgage” are used interchangeably in this act.

(11) “Grantor” means the person granting a lien on real property in a lien

instrument or the person granting an interest in real property in an instrument that is not a lien instrument.

(12) “Home loan” means the following:

(A) Except as exempted in subparagraph (B) of this paragraph, every loan secured by a lien instrument encumbering residential real property that meets the following criteria:

(i) The owner of the residential real property is one or more natural persons;

(ii) The residential real property is improved with one or more structures, some part of which is a one to 4 family dwelling;

(iii) The residential real property is occupied by the owner as the owner’s principal dwelling or in good faith is intended to be occupied by a borrower who is one or more natural persons as the borrower’s principal dwelling at the time of the loan closing. An owner may have only one principal dwelling. The owner’s absence from the residential real property shall not, in and of itself, prevent the owner from being deemed to occupy the residential real property if (I) the owner’s absence from the residential real property is due to health or marital problems; or (II) the owner’s absence from the residential real property is due to employment requirements or family problems where the owner intends to return to the residential real property as the owner’s principal dwelling in the future; and

(iv) The loan must meet the applicable criteria set forth in either sub-sub-subparagraph (I) or sub-sub-subparagraph (II) of this sub-subparagraph:

(I) If the primary purpose of the loan is for any combination of purchasing, refinancing, or additional financing of the borrower’s residential real property or improving an existing structure on the borrower’s residential real property:

(aa) The principal amount of the note at the initial funding, secured by a residential lien instrument creating a first lien, does not exceed the conforming loan principal amount dollar limit for a single-family dwelling loan as established from time to time by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or

(bb) The sum of the principal amount of the note at the initial funding, secured by a residential lien instrument creating a subordinate lien other than a first lien, plus the sum of the unpaid principal balances of all other senior priority lien instruments encumbering the residential real property for any combination of purchasing or refinancing or additional financing of the borrower’s residential real property or improving an existing structure on the borrower’s residential real property, does not exceed the conforming loan principal amount dollar limit for a single-family dwelling loan as established from time to time by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; or

(II) If the loan is evidenced by an obligation other than a

promissory note, or if the loan obligation is secured by liens on real property or personal property in addition to the residential real property and related personal property which is the owner's principal dwelling, or the owner of the encumbered residential real property is a co-maker, accommodation party or guarantor of a note where the proceeds of the note are advanced for a primary purpose other than the purchase, additional finance, refinance or improvement of the residential real property and related personal property which is the owner's principal dwelling, then the assessed value of the encumbered residential real property which is the owner's principal dwelling at the time of initial funding shall not exceed \$1 million.

(B) The following loans are exempt from subparagraph (A) of this paragraph and shall be not be considered a "home loan" for the purposes of this act:

(i) A "home equity conversion mortgage" as that term is defined in section 235 of the National Housing Act, approved August 1, 1968 (82 Stat. 477;12 U.S.C. § 1715z-20) or a reverse mortgage that fully complies with one of the reverse mortgage approved mortgage loan programs of the U.S. Department of Veteran Affairs, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or any agency of the District;

(ii) A construction loan for the initial construction of one or more single-family dwellings;

(iii) A loan secured by a purchase money lien instrument encumbering residential real property that is the owner's principal dwelling;

(iv) A loan secured by a residential lien instrument encumbering residential real property which is the owner's principal dwelling where the primary purpose of the loan is for the refinancing or additional financing of the owner's principal dwelling, with or without improving the owner's principal dwelling, and where the home loan adjusted rate is equal to or less than the home loan reference rate, excluding any loan where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note secured by the residential lien instrument; provided, that any loan, commonly referred to as an adjustable rate mortgage, where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note secured by the residential lien instrument, shall not be exempted under this subparagraph;

(v) A first lien loan and second lien loan created simultaneously in the same transaction and secured by residential lien instruments encumbering the same residential real property which is the owner's principal dwelling where the primary purpose of the loan is for the refinancing or additional financing of the owner's principal dwelling, with or without improving the owner's principal dwelling, and where the average home loan adjusted rate for both loans is equal to or less than the home loan reference rate, excluding any loan where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note secured by the residential lien instrument;

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provided, that any loan, commonly referred to as an adjustable rate mortgage, where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the note secured by the residential lien instrument, shall not be exempted or used to create an exemption under this subparagraph. The average home loan adjusted rate shall be calculated by:

(I) Determining the home loan adjusted rate for each loan;  
(II) Multiplying the home loan adjusted rate for each loan  
by the principal amount of the same loan;

(III) Adding the 2 amounts determined under sub-sub-  
subparagraph (II) of this sub-subparagraph; and

(IV) Dividing the sum of the 2 amounts determined under  
sub-sub-subparagraph (III) of this sub-subparagraph by the sum of the principal amounts of the 2  
loans;

(vi) A loan purchased by, delivered to, and made and serviced in  
conformity with the underwriting guidelines and servicing procedures of the Federal Home Loan  
Mortgage Corporation or the Federal National Mortgage Association;

(vii) A loan made, guaranteed, or insured in whole or in part by  
agencies of the United States, the District, or any state or municipal government including the  
Federal Housing Administration, the Government National Mortgage Association, the U.S.  
Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and  
the District of Columbia Housing Finance Agency;

(viii) A loan made in conformity with a documented loan program  
of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, a  
Federal Home Loan Bank, a similar, national, secondary-market making organization regulated  
or controlled by the United States, an insured depository institution, a residential mortgage  
originator or purchaser licensed under the Mortgage Lenders and Brokers Act of 1996  
("Mortgage Lenders and Brokers Act") which maintains a net worth exceeding \$10 million, or a  
secondary market purchaser of residential loans which maintains a net worth exceeding \$10  
million, whether or not the loan is purchased by one of these entities, which loan program has  
been reviewed and approved by the Mayor, under section 1409, for the purposes of creating an  
exemption under this subsection. A loan program for which an approval application is submitted  
to the Mayor under this subsection shall have a projected total dollar amount, certified in the  
application, of not less than \$5 million; provided, that the Mayor may change the required total  
dollar amount by regulation;

(ix) A home equity line of credit loan, commonly referred to as a  
home equity loan where the principal amount can be re-advanced, that satisfies all the following  
conditions:

(I) The residential lien instrument must be a credit line  
deed of trust, as defined in section 2(1) of the Real Property Credit Line Deed of Trust Act of

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1987 (“Deed of Trust Act”), for single family residential property, as defined in section 2(3) of the Deed of Trust Act, and must comply with the notice requirements in section 3 of the Deed of Trust Act;

(II) No origination/discount points and fees were charged to any borrower or owner of the residential real property; except, that this sub-sub-subparagraph does not preclude the payment of any transfer and recordation taxes applicable to the residential lien instrument, any charge described in subsection (i), (iii), (iv), or (v) of section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, and a loan origination, document preparation, underwriting, or processing fee, however designated, that does not exceed the greater of 1% of the total home equity loan amount or \$500 or such greater amount established by the Mayor by regulation;

(III) The home equity loan is prepayable at any time without additional cost, fee or premium; provided, that a lender which did not collect all of the charges for creating the home equity loan allowed by sub-sub-subparagraph (II) of this sub-subparagraph, shall not be prevented from collecting some or all of those charges if the borrower voluntarily terminates the home equity loan before 36 months after the creation of the home equity loan; and

(IV) Interest on the home equity loan accrues and is charged only on the unpaid principal balance, calculated daily;

(x) A loan, commonly referred to as a bridge loan, that satisfies all of the following conditions:

(I) The note evidencing the bridge loan is secured by a single residential lien instrument or 2 residential lien instruments that encumber at all times 2 residential real properties, one of which is purchased by the borrower simultaneously with the funding of the loan and is located in the District of Columbia;

(II) The stated term and maturity of the note evidencing the bridge loan is not more than one year;

(III) No origination/discount points and fees were charged to any borrower or owner of the residential real properties;

(IV) The bridge loan is prepayable at any time without additional cost, fee or premium; and

(V) Interest on the bridge loan accrues and is charged only on the unpaid principal balance, calculated daily;

(xi) A loan evidenced by an obligation other than a promissory note, or a loan obligation secured by liens on real property or personal property in addition to the residential real property and related personal property which is the owner’s principal dwelling, or a loan where the owner of the encumbered residential real property is a co-maker, accommodation party or guarantor of a note where the proceeds of the note are advanced for a primary purpose other than the purchase, additional finance, refinance or improvement of the

residential real property and related personal property which is the owner's principal dwelling, where the assessed value of the encumbered residential real property which is the owner's principal dwelling at the time of initial funding exceeds \$1 million.

(C) An information form shall serve as primary evidence of whether a loan satisfies the definition of home loan under subparagraph (A) of this paragraph or the requirements for an exemption under subparagraph (B) of this paragraph. Absent clear and convincing evidence that the information form contains or is based on materially incorrect information, the statements in the information form shall govern the determination of whether a loan qualifies as a home loan.

(13) "Home loan adjusted rate" means either of the applicable interest rates in subparagraphs (A) or (B) of this paragraph, expressed as an annual percentage interest rate calculated to the nearest 0.01%.

(A) For any mortgage loan commonly referred to as an adjustable rate mortgage that adjusts the stated interest rate in the note on the basis of a recognized, national or international, adjustable rate mortgage index and a fixed margin amount, by adding the fixed margin amount to the recognized, national or international, adjustable rate mortgage index to determine the fully indexed interest rate for the adjustable rate mortgage, where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the 5th anniversary of the date of the note secured by the residential lien instrument, the home loan adjusted rate shall be equal to the lower of the annual percentage rate, as defined in section 226.22 of Title 12 of the Code of Federal Regulations, less one and one-quarter percent, or the percentage determined by adding and subtracting:

- (i) The recognized, national or international, adjustable rate mortgage index's annual interest rate on the date the interest rate for the applicable mortgage loan is agreed to by the borrower and person making the mortgage loan; plus
- (ii) The fixed margin amount stated or referred to in the note; plus
- (iii) The product of 35 basis points times the origination/discount points and fees points charged to any borrower in connection with the origination of the mortgage loan; less
- (iv) One and one-quarter percent.

(B) For a fixed rate mortgage, or a mortgage loan commonly referred to as an adjustable rate mortgage that is not described in subparagraph (A) of this paragraph, the home loan adjusted rate shall be equal to the lower of the annual percentage rate, as defined in section 226.22 of Title 12 of the Code of Federal Regulations, less one percent, or the percentage determined by adding and subtracting:

- (i) The annual interest rate agreed to by the borrower and person making the mortgage loan and stated in the note; plus
- (ii) The product of 25 basis points times the origination/discount points and fees charged to any borrower in connection with the origination of the mortgage loan;

less

(iii) One percent.

(14)(A) "Home loan reference rate" means the sum of the following interest rate expressed as an annual percentage interest rate calculated to the nearest 0.01%;

(i) The "Average Conventional 30-Year Commitment Rate" for fixed-rate mortgages originated in the Northeast region, as reported periodically by the Federal Home Loan Mortgage Corporation in the Primary Mortgage Market Survey using the rate published most recently prior to the date the interest rate for the applicable mortgage loan is agreed to by the borrower and person making the mortgage loan; plus

(ii) The product of 25 basis points times the "Fees & Points" most recently reported for 30-year fixed-rate mortgages originated in the Northeast region, as reported periodically by the Federal Home Loan Mortgage Corporation in the Primary Mortgage Market Survey using the "Fees & Points" reported with the "Average Conventional 30-Year Commitment Rate" for fixed-rate mortgages originated in the Northeast region under subparagraph (A) of this paragraph.

(B) If the Federal Home Loan Mortgage Corporation stops reporting an "Average Conventional 30-Year Commitment Rate" with "Fees & Points" for fixed-rate mortgages originated in the Northeast region in the Primary Mortgage Market Survey on a periodic basis less frequent than monthly, then the Mayor shall designate a substitute index and calculation method for use in determining the home loan reference rate in the D.C. Register. After the publication of a substitute index and calculation method, the substitute index and calculation method shall be followed in the determination of home loan reference rate.

(15) "Information form" means a certification in a form promulgated by the Mayor as provided in section 205.

(16) "Interested person" means the owner, the beneficiary, mortgagee or obligee of a lien instrument that has been recorded among the land records, or any other person with an interest in real property encumbered by a lien instrument or the foreclosure sale proceeds arising therefrom where the interest can be determined by a search of the land records with respect to the real property.

(17) "Land installment contract" means a contract to purchase real property where the vendor holds title to the real property while the vendee has the benefits and burdens of ownership and title is to be conveyed to the vendee after some portion or all of the purchase price is paid with or without interest.

(18) "Land records" means the land records maintained by the Recorder of Deeds.

(19) "Lien" means a monetary claim on real property or personal property related to real property.

(20) "Lien instrument" means a deed of trust, mortgage, security agreement, trust deed, land installment contract, contract for a deed, assignment of lease, rent, profit or any

other conveyance or retention of an interest in real property or personal property related to real property, including cooperative housing units and garage spaces, which secures the performance of a note or other obligation and creates a lien on real property or security interest in personal property. The term “lien instrument” includes an amendment, modification, supplement, replacement or restatement of a lien instrument.

(21) “Mortgage” means a lien instrument with at least 2 parties in which the mortgagor grants a lien on real property to the mortgagee as security for the repayment of a note or performance of an obligation. The terms “mortgage” and “deed of trust” are used interchangeably in this act.

(22) “Mortgagee” means the person secured by a mortgage or the beneficiary secured by a deed of trust.

(23) “Mortgagor” means the owner or borrower granting a mortgage or deed of trust.

(24) “Note” means a promissory note secured by a deed of trust, a promissory note or mortgage bond secured by a mortgage, or any other written evidence of indebtedness or obligation secured by a lien instrument.

(25) “Noteowner” means the person who is the owner of the note. The noteowner may or may not be the holder of the note.

(26) “Notice” means a written notice that describes with reasonable clarity the specific act, event, or default and the response that the notice sender is seeking from the addressee or other party obligated to the sender of the notice.

(27) “Obligation” means the duty or agreement to pay an amount of money or perform some other act pursuant to a note or other written agreement that is secured by a lien instrument.

(28) “Obligee” means a person holding a note or other obligation secured by a lien instrument to whom the obligation must be performed, including noteowner, beneficiary and mortgagee.

(29) “Obligor” means a person liable on a note or other obligation secured by a lien instrument, including borrower, owner, guarantor, accommodation party, co-maker, and endorser.

(29A) “Origination/discount points and fees” means the total origination points and fees and the total discount points and fees charged by the initial noteowner, the mortgage broker and mortgage lender for originating the loan and reducing the interest rate on the loan in exchange for the discount points and fees, excluding reasonable document preparation charges.

(30) “Owner” means a person who holds legal title to an interest in real property that can be determined from a search of the land records.

(31) “Person” means an individual, corporation, governmental subdivision or agency, business trust, estate, trustee for a trust, partnership, association, limited liability company, joint venture, government, or any other legal or commercial entity or agent.

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(32) “Point” means 1% when referring to a portion of a loan amount.

(33) “Power of sale” means the right of the trustee pursuant to a deed of trust or the right of a mortgagee or assignee for foreclosure pursuant to a mortgage to sell the real property after an uncured default at a public auction as provided in this act in order to repay the note or other obligation secured by the deed of trust or mortgage. Power of sale may also refer to the right of the secured party pursuant to a security agreement to sell the personal property after an uncured default at a public auction as provided in this act in order to repay the note or other obligation secured by the security agreement.

(34) “Purchase money” means the money or other consideration given to acquire an ownership interest in real property.

(35) “Purchase money lien instrument” means a lien instrument given to a vendee of real property or to a noteowner other than the vendee to the extent that the primary purpose for which the proceeds of the loan are used is to:

(A) Acquire an ownership interest in real property; or

(B) Construct improvements on real property if the lien instrument is given as part of the same transaction in which an ownership interest in the real property is acquired.

(36) “Real property” means real property in the District of Columbia and interests in real property located in the District of Columbia, including the stock of a cooperative housing corporation and associated residential lease of a cooperative housing unit or garage space.

(37) “Recorder of Deeds” means the office of Recorder of Deeds of the District of Columbia.

(38) “Rent” means the proceeds payable by a lessee, licensee, or other person for the right to possess, use, or occupy the real property of another.

(39) “Residential lien instrument” means a lien instrument encumbering residential real property separately or together with other real property.

(40) “Residential real property” means real property in the District of Columbia improved by:

(A) A one to 4 family dwelling, including a condominium or cooperative housing unit; or

(B) Up to 10 dwelling units where the owner of the residential real property is one or more natural persons who occupy one of the dwelling units as the owner’s principal dwelling or where one of the dwelling units in good faith is intended to be occupied by a borrower who is one or more natural persons as the borrower’s principal dwelling at the time of the loan closing; or

(C) A mixed-use building with an assessed value of \$1 million or less containing one to 4 family dwelling units where the owner of the residential real property is one or more natural persons who occupy one of the dwelling units as the owner’s principal dwelling

or where one of the dwelling units in good faith is intended to be occupied by a borrower who is one or more natural persons as the borrower's principal dwelling at the time of the loan closing.

(41) "Security agreement" means an agreement that creates a security interest under Article 9 of the Uniform Commercial Code, in personal property which is part of or given in conjunction with a lien instrument encumbering real property.

(42) "Statutory lien" means a lien on real property in favor of the District, an agency or authority of the District, or the United States of America, which was created by statute.

(43) "Subordinate interest holder" means the person holding an interest in real property which can be determined from the land records, other than the owner, which is subordinate in priority to the lien of the applicable lien instrument.

(44) "Transfer" means assign, bargain, sell, convey, endorse, pledge, hypothecate, or otherwise transfer.

(45) "Trustee" means the person holding a lien on real property pursuant to a deed of trust, the assignee for foreclosure in a mortgage, or the assignee for foreclosure in a security agreement.

(46) "Unconscionable" means oppressive or unreasonably harsh or manifestly unfair, considering all the circumstances.

(47) "Uniform Commercial Code" means Subtitle I of Title 28 of the District of Columbia Code.

(48) "Writing" means a document or instrument that can be accurately reproduced by copying, printing, or some other means of reproduction.

## **TITLE II. LIEN INSTRUMENTS**

### **Sec. 201. General.**

(a) A lien instrument shall be enforceable whether or not any person is personally liable for that performance.

(b) Consideration shall not be necessary to the enforceability of a lien instrument.

(c) A lien instrument that secures a performance of a preexisting legal obligation shall be enforceable.

(d) The obligation whose performance is secured by a lien instrument may be that of the borrower or of some other person.

(e) In order to be enforceable, the obligation secured by a lien instrument shall be measurable in terms of money or shall be readily reducible to monetary value at the time of enforcement of the lien instrument.

### **Sec. 202. Creation; statement of monetary value; other obligations secured.**

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- (a) A lien instrument conveying any lien on real property shall:
  - (1) Be executed in the same manner as an absolute deed;
  - (2) Take effect both as among the parties thereto and as to others, bona fide purchasers and interested persons, in the same manner and under the same conditions as an absolute deed; and
  - (3) Identify the obligation whose performance it secures and state a monetary value in United States currency of the principal amount of such obligation, including the unconditional or conditional guarantee of an obligation.
- (b) A lien instrument conveying any lien on real property may:
  - (1) Be acknowledged and recorded in the same manner as an absolute deed; and
  - (2) Secure any combination of simple interest, compound interest, default interest, late fees, future advances, advances to protect the security in the real property or personal property, advances to preserve or enhance the real property or personal property, enforcement expenses, indemnification obligations, and similar obligations identified in the lien instrument that are secured in the same priority as the stated principal amount but not included in the stated monetary value shall, for the purposes of this act, be understood to be included within the amount of the note or other debts or obligations secured by the lien instrument.
- (c) If a lien instrument or the obligation it secures contains any covenant that the noteowner shall be entitled to share in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the real property encumbered thereby, or in any portion of the proceeds or appreciation upon refinancing, sale or appraisal or similar event, the sharing obligation shall be on an equal priority with the principal amount of the stated monetary value secured by the lien instrument and in the event of a foreclosure sale may be paid in the same priority as the principal amount or a lower priority specified in the lien instrument or obligation it secures, so long as the principal terms of such sharing arrangement are specified in the lien instrument recorded among the land records in order to provide notice to subsequent interested persons.

Sec. 203. Lien instrument creates security interest only; negative covenant does not create a lien instrument.

- (a) A lien instrument creates only a security interest in real property and confers no right of possession of that real property solely by virtue of the security interest.
- (b) An agreement in a lien instrument that grants the beneficiary, trustee or mortgagee, as beneficiary or mortgagee, the right to possession of the real property in the future is unenforceable; except an agreement in or created contemporaneously with a lien instrument that confers on the beneficiary, trustee or mortgagee an interest in the borrower's real property is enforceable unless its effectiveness is expressly dependent on a default in the obligation.
- (c) Notwithstanding the provisions of subsections (a) and (b) of this section:
  - (1) A beneficiary, trustee or mortgagee may gain access to the rents, issues, and

profits of real property through the enforcement of a deed of trust or mortgage thereon;

(2) Possession of the real property encumbered by a deed of trust or mortgage can be obtained before foreclosure through the judicial appointment of a receiver; and

(3) A beneficiary, trustee or mortgagee who obtains possession of the real property encumbered by a deed of trust or mortgage may retain possession until the deed of trust or mortgage is redeemed or foreclosed if:

(A) The owner voluntarily delivers possession to the beneficiary, trustee or mortgagee;

(B) The beneficiary, trustee or mortgagee enters the real property after abandonment by the owner; or

(C) The beneficiary, trustee or mortgagee enters after purchasing the real property in good faith at a valid or invalid foreclosure sale.

(d) In the absence of other evidence of intent to create a lien instrument, the promise by a borrower to a creditor not to encumber or transfer an interest in real property does not create a mortgage, deed of trust, lien instrument, or other equitable lien on such real property.

**Sec. 204. Parties to a lien instrument and addresses.**

(a) Every lien instrument, certificate of transfer, assignment, modification, or amendment of a lien instrument, or deed of appointment of substitute trustee to be recorded among the land records shall have the name and address of each party to the instrument, including consenting parties, typed or printed in the instrument, preferably on the first page. Every full or partial release, note affidavit, release affidavit, certificate of satisfaction, or certificate of partial satisfaction to be recorded among the land records shall have the name and address of those parties to the instrument as required in section 218, typed or printed in the instrument, preferably on the first page. Any lien instrument, certificate of transfer, assignment, modification, or amendment of a lien instrument, deed of appointment of substitute trustee, full or partial release, note affidavit, release affidavit, certificate of satisfaction or certificate of partial satisfaction without the name and address of each required person so typed or printed somewhere in the instrument shall not be recorded among the land records; provided, that the absence of the name and address of a required party to a recorded instrument typed or printed in the instrument shall not invalidate or adversely affect the enforcement of the instrument.

(b) The Recorder of Deeds may require the person submitting the instrument for recordation to identify where the name and address of each required person are located in the instrument, and to provide the name and address of the person submitting the instrument for recordation.

(c) Compliance with this section shall not relieve any interested party from complying with the section 499d of An Act To establish a code of law for the District of Columbia. A subordinate interest holder who fails to comply with the section 499d of An Act To establish a code of law for the District of Columbia may lose the right to be sent a notice of commencement

of foreclosure as provided in section 502(c)(3).

Sec. 205. Information form required in every deed of trust or mortgage encumbering residential real property.

(a) Every deed of trust or mortgage that encumbers residential real property, including amendments, modifications, or supplements that alter any financial term in the note, mortgage or deed of trust, and that is recorded among the land records after 60 days after the effective date of the Mayor's regulations implementing the information form provisions of this act shall have an information form attached to it, unless the noteowner has elected to foreclose by judicial foreclosure and not by power of sale foreclosure and attaches a certification to the deed of trust or mortgage to that effect. The information form shall be prepared by the originating noteowner or the originating noteowner's agent and be executed and acknowledged by all borrowers and owners in the deed of trust or mortgage, by the mortgage broker or person who originated or placed the loan or vendor who is the noteowner in a purchase money lien instrument, and by any other persons the Mayor may require to execute and acknowledge the information form.

(b) The information form shall include at least the following information:

(1) The names and addresses of the borrower, owner (if not the borrower) and original noteowner;

(2) The address, the assessment and taxation lot and square numbers, the recorded lot and square numbers, if different, and the then current assessed value of the residential real property encumbered by the deed of trust or mortgage;

(3) The maximum principal amount of the note secured by the lien instrument, the amount of the loan funded at the settlement, and the total amount of all origination/discount points and fees charged to the borrower and owner;

(4) The name and business address of every mortgage lender and mortgage broker involved in placing or originating the loan, or a certification by the noteowner that no mortgage lender or mortgage broker was involved in placing or originating the loan;

(5) For each mortgage lender or mortgage broker involved in placing or originating the loan:

(A) The mortgage lender's or mortgage broker's District of Columbia license number under the Mortgage Lenders and Brokers Act of 1996 ("Mortgage Lenders and Brokers Act of 1996"), or

(B) A certification by the mortgage lender or mortgage broker to the borrower, owner and the Mayor that the mortgage lender or mortgage broker is exempt from the licensing requirements of the Mortgage Lenders and Brokers Act and a detailed explanation of the basis for the exemption;

(6) The name and address of the title company, attorney, or person conducting the settlement of the loan who is responsible for collecting and disbursing any loan proceeds at the settlement;

(7) A certification by the borrower and owner of the number of residential lien instruments, regardless of lien priority, that have been granted by the owner on the residential real property in the 18 month period before the date of the loan closing;

(8) A certification by the original noteowner or original noteowner's agent to the borrower, owner and Mayor that:

(A) The deed of trust or mortgage secures or does not secure a home loan; and

(B) A reasonably detailed analysis of the basis for that conclusion has been provided to the borrower and owner in writing;

(9) Whether any single-premium credit insurance was paid for from the loan proceeds; and

(10) Other information and certifications as required by the Mayor.

(c) In providing the information required by subsection (b)(5) of this section, a noteowner shall be permitted to reasonably rely on information provided by the mortgage broker regarding the mortgage broker's license number or the mortgage broker's exemption from the licensing requirements of the Mortgage Lenders and Brokers Act.

(d) Any information form that is completed, executed, and acknowledged and attached to a recorded deed of trust or mortgage shall be presumed correct. Absent fraud, mutual mistake or collusion by one or more persons in preparing a knowingly false information form, the borrower, owner, original noteowner or successor noteowner may unilaterally correct or supply a missing information form until that date which is 6 months after its recordation among the land records; provided, that any party which intends to unilaterally correct or supply an information form shall notify the other parties referenced in this subsection prior to the correction or supplying in order for the correction or supplying to be deemed effective. The persons signing the information form and all parties to the note and residential lien instrument shall have a duty to reasonably cooperate with each other in the correction of an information form or creation of a missing information form and shall promptly execute, acknowledge and deliver a correction to or a missing information form and amendment to the lien instrument to record the corrected or missing information form. The owner and noteowner may jointly modify or supply a missing information form at any time.

(e) The information form and instructions for completing and executing the information form shall be prepared and published in the District of Columbia Register by the Mayor. The Mayor may change the information form or instructions at any time on not less than 3 months advance publication in the D.C. Register. After the publication of a revised information form or instructions, either the existing or the revised information form shall be accepted, and either the existing or the revised instructions may be followed, until the advance publication period expires.

(f) Any deed of trust or mortgage recorded after 60 days after the effective date of the Mayor's regulations implementing the information form provisions of this act encumbering residential real property that does not have a properly completed information form attached to it,

within the later of 6 months after initially recording the deed of trust or mortgage or one year before the first notice of commencement of foreclosure is sent under section 502, shall not be foreclosed using a power of sale foreclosure and may be foreclosed only by judicial foreclosure shall be foreclosed only by judicial foreclosure; provided, that an information form shall not be deemed to not be properly completed solely because of a non-material, bona fide error in the information provided on the form. Any power of sale foreclosure of a deed of trust or mortgage recorded after 60 days after the effective date of the Mayor's regulations implementing the information form provisions of this act encumbering residential real property that does not have a properly completed information form attached to it shall be void. In any judicial foreclosure proceeding for a deed of trust or mortgage recorded after 60 days after the effective date of the Mayor's regulations implementing the information form provisions of this act encumbering residential real property that does not have a properly completed information form attached to it within the time limitations provided in this subsection, the borrower or owner shall be permitted to admit parole evidence of the financing transaction in any claim of predatory lending or misconduct on the part of any noteowner, mortgage lender or mortgage broker involved in the financing transaction.

Sec. 206. Execution, acknowledgement and recordation of a lien instrument in the same manner as a deed.

A lien instrument conveying an estate in real property: (1) shall be executed; (2) shall be acknowledged and recorded in the same manner as an absolute deed; and (3) shall take effect both as to the parties thereto and as to others, bona fide purchasers and interested persons, in the same manner and under the same conditions as an absolute deed.

Sec. 207. Duty of Recorder of Deeds.

The Recorder of Deeds shall record all lien instruments among the land records in the same manner as absolute deeds unless the lien instrument requires filing in different records pursuant to Article 9 of the Uniform Commercial Code.

Sec. 208. Assignment, transfer, enforcement and performance of deed of trust or mortgage.

(a) A transfer of a note secured by a deed of trust or mortgage shall also transfer the deed of trust or mortgage unless the parties to the transfer agree otherwise.

(b) Except as otherwise required by the Uniform Commercial Code, a transfer of a deed of trust or mortgage shall also transfer the note that the deed of trust or mortgage secures unless the parties to the transfer agree otherwise.

(c) A deed of trust or mortgage may be enforced only by, or on behalf of, a person who is entitled to enforce the note the deed of trust or mortgage secures.

(d) Except as otherwise provided by the Uniform Commercial Code, after transfer of a

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note secured by a deed of trust or mortgage, performance of the note to the transferor is effective against the transferee if rendered before the obligor receives notice of the transfer.

(e)(1) Whenever a note secured by a deed of trust or mortgage on real property has been transferred, the transferor or the transferee, at the transferee's option, shall either:

(A) Cause an instrument of transfer to be recorded among the land records, provided that the instrument is in proper form for recordation, and otherwise complies with the section 499d of An Act To establish a code of law for the District of Columbia; or

(B) Cause a certificate of transfer in the form specified in subsection (f) of this section, signed by the transferor, to be recorded among the land records.

(2) The instrument of transfer or certificate of transfer, upon recordation among the land records, shall operate as a notice of the transfer.

(f) The certificate of transfer referred to in subsection (e) of this section shall conform substantially to the following with the proviso that information designated as "optional" and printed in italics is requested, if known, but shall not be required:

**"CERTIFICATE OF TRANSFER**

**"KNOW ALL PERSONS BY THESE PRESENTS:**

"The undersigned transferor is the original payee or obligee [or the subsequent assignee] of the note or other obligation identified below which is secured by the deed of trust, mortgage, vendor's lien, or other lien instrument identified below. The undersigned transferor hereby certifies that the transferor's entire interest in such note or other obligation and in such deed of trust, mortgage, vendor's lien, or other lien instrument has been transferred and assigned to the transferee identified below.

Name of Lien Instrument: \_\_\_\_\_  
(i.e., "Deed of Trust" or "Mortgage" or "Vendor's Lien")

Date of Lien Instrument: \_\_\_\_\_

Real Property Encumbered: Assessment and Taxation Lot No(s). \_\_\_\_\_, Square No. \_\_\_\_\_, (Optional: Recorded Lot No(s). \_\_\_\_\_,)

[Optional: per Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Records of the Office of the Surveyor of the District of Columbia] (Optional: Attach Legal Description if more complex than recorded lot and square numbers)

(Optional: Original Amount Secured (if applicable): \_\_\_\_\_)

Instrument Number (or Liber and folio) of Recorded Lien Instrument: \_\_\_\_\_

Date or Year of Recording Lien Instrument: \_\_\_\_\_

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Prior Certificate(s) of

Transfer: \_\_\_\_\_)

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Amendments, Modifications, Extensions, Supplements, Etc. to Lien Instrument: \_\_\_\_\_)

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(Optional: Name and Address (if known) of Original Grantor/Mortgagor/Obligor: \_\_\_\_\_ )

(Optional: Name and Address (if known) of Original Trustee(s), if applicable: \_\_\_\_\_ )

(Optional: Name and Address (if known) of Original Beneficiary/Mortgagee/Obligee: \_\_\_\_\_ )

Name of Transferee as new Beneficiary/Mortgagee/Obligee: \_\_\_\_\_

Type and Domicile of Transferee Entity (if applicable): \_\_\_\_\_

Notice Address of Transferee: \_\_\_\_\_

Name of former Noteowner/Transferor: \_\_\_\_\_

Notice Address of former Noteowner/Transferor: \_\_\_\_\_

WITNESS the hand and seal of the undersigned transferor [noteowner] this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Print name, title, entity name, etc.]

[Note: Conform execution and acknowledgement for requirements applicable to person giving affidavit.]

DISTRICT/STATE OF \_\_\_\_\_ )

) ss:

CITY/COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared this date, \_\_\_\_\_, who executed the foregoing and annexed Certificate of Transfer dated \_\_\_\_\_, 20\_\_\_\_, who, being by me first duly sworn, did acknowledge such Certificate of Transfer to be his/her/its act and deed for the uses and purposes therein contained.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_"

(g) Nothing in this section shall imply that recordation of the instrument of transfer or a certificate of transfer among the land records is necessary in order to transfer to a transferee the benefit of the security provided by the deed of trust or mortgage.

Sec. 209. Assignment or transfer of real property encumbered by lien instrument and liability of transferor and transferee to noteowner and each other.

(a) When real property encumbered by a lien instrument is transferred with assumption of liability where the express promise is verifiable by evidence:

(1) The lien instrument remains effective against the real property in the hands of the transferee.

(2) The transferor remains personally liable for the covenants in the lien instrument and for the obligation secured by the lien instrument, to the extent such liability existed prior to the transfer.

(3) In the event of a default in the performance of the obligation secured by the lien instrument, the noteowner has the right, except as limited by the parties' agreement, by statute, or by section 208(c) or (d) to:

(A) Proceed against the transferor personally to the extent of the transferor's liability;

(B) Proceed against the transferee personally to the extent of the transferee's liability under the assumption agreement; and

(C) Enforce the lien instrument and thereafter to proceed against the transferor and the transferee personally for any deficiency, to the extent of their respective liabilities.

(b) The noteowner's rights against the transferee under subsection (a) of this section exist:

(1) Whether or not the transferor is personally liable on the obligation secured by the lien instrument;

(2) Whether the transferee receives the transferor's entire interest in the real property, some portion of the transferor's interest, or a lien instrument on the transferor's interest;

(3) Whether or not consideration is given by the noteowner for the transferee's assumption agreement;

(4) Whether or not the transferor has a defense to the obligation or the lien instrument, provided that the transfer is a sale and the full amount of the lien instrument obligation is credited against the price paid by the transferee; and

(5) Even if the transferor and transferee, subsequent to the transfer, mutually rescind or modify the assumption agreement; provided, that the noteowner, prior to receiving notification of the rescission or modification, materially changes position in justifiable reliance on the assumption agreement, brings suit on it, or manifests assent to it at the request of the transferor or transferee.

(c) When real property encumbered by a lien instrument is transferred with assumption of liability where the express promise is verifiable by evidence, the transferor shall be regarded as a secondary obligor and the transferee shall be regarded as a principal obligor, under the principles of suretyship and guaranty. When real property encumbered by a lien instrument is transferred with assumption of liability, if the transferee defaults in performance of the obligation

secured by the lien instrument, creates an unreasonable risk of default, or otherwise engages in conduct that impairs the transferor's expectation that the transferee will perform the obligation secured by the lien instrument, the transferor is entitled to relief against the transferee and the security of the real property encumbered by the lien instrument by way of exoneration and *quia timet*, reimbursement, restitution, and subrogation.

(d) When real property encumbered by a lien instrument is transferred without assumption of liability:

(1) The lien instrument shall remain effective against the real property in the hands of the transferee.

(2) The transferor shall remain personally liable for the covenants in the lien instrument and for the obligation secured by the lien instrument, to the extent such liability existed prior to the transfer.

(3) In the event of a default in the performance of the obligation secured by the lien instrument, the noteowner has the right, except as limited by the parties' agreement, by statute, or by section 208(c) or (d) to:

(A) Proceed against the transferor personally, to the extent of the transferor's liability; and

(B) Enforce the lien instrument and thereafter to proceed against the transferor personally, to the extent of the transferor's liability, for any deficiency.

(4) The transferee shall not become personally liable, by virtue of the transfer, for the obligation secured by the lien instrument.

(5) If the transfer is a sale and the full amount of the lien instrument obligation is credited against the price paid by the transferee, the transferor is regarded as a secondary obligor, and the real property encumbered by the lien instrument is regarded as principal obligor, under the principles of suretyship and guaranty. If the transferee defaults in performance of the obligation secured by the lien instrument, the transferor is entitled to relief against the security of the real property encumbered by the lien instrument by way of subrogation.

(e) Notwithstanding the provisions of subsections (a) through (d) of this section, the transferor of real property encumbered by a lien instrument may be discharged from personal liability under the lien instrument by receiving from the noteowner an express release from the obligation secured by the lien instrument, or by virtue of suretyship defenses under the principles of suretyship and guaranty.

Sec. 210. Obligation to provide name and address of noteowner, interested persons in note, amounts due and status of lien instrument.

(a) Upon written request made for good cause by a person described in subsection (b) of this section, the noteowner, beneficiary, mortgagee and secured party, or any one of them as agreed upon among themselves, have a duty to disclose in writing, within a reasonable time:

(1) The amount owing on the note whose performance is secured by the lien

instrument;

(2) The current interest rate on the note, and the basis for adjustment if the rate is adjustable;

(3) The amount of any additional fees or charges owed to the noteowner in connection with the lien instrument;

(4) Whether the noteowner considers the note to be in default or to be accelerated;

(5) If the lien instrument contains a reservation of right in the lien instrument to modify the lien instrument as provided in section 224(c), whether any notice has been issued to the noteowner under section 224(d);

(6) The amounts and purposes of any funds held by the noteowner in escrow or impound accounts in connection with the lien instrument;

(7) The name and address of the noteowner, beneficiary, mortgagee or secured party where further written communications should be sent; and

(8) The name and address, if known to the noteowner, beneficiary, mortgagee or secured party, of any person who has acquired an interest in the lien instrument or the note secured thereby equal to or greater than 25% of the total interests, except for those persons who obtained their interests through a security or bond which is publicly traded on a recognized securities exchange or a bond which was privately placed.

(b) A request under subsection (a) of this section shall be made for good cause and may be made by:

(1) The borrower personally liable under the note or owner of real property encumbered by the lien instrument;

(2) Any person whose performance of the note is secured by the lien instrument;

(3) Any subordinate interest holder in the real property encumbered by the lien instrument not more frequently than once every 12 months; or

(4) A prospective bidder at a foreclosure sale of a lien instrument subordinate to the lien instrument identified in subsection (a) of this section, or judicial sale of a lien subordinate to the lien instrument identified in subsection (a) of this section.

(c) A noteowner who, without good cause, fails to comply or to cause the beneficiary, mortgagee or secured party to comply with subsection (a) of this section or discloses erroneous information shall be liable for the damages caused by the failure or error, and the noteowner may be ordered by a court of appropriate jurisdiction to comply with this section. A noteowner who discloses erroneous information may be estopped to deny its accuracy as against one who has reasonably and detrimentally relied on the disclosure.

**Sec. 211. Decisions by multiple noteowners.**

(a) Where there are multiple persons owning a note secured by a lien instrument or the lien instrument secures multiple notes, except as may have been agreed otherwise among the

persons owning the note or notes, the persons holding a majority of the ownership interests in the note or notes secured by the lien instrument may declare a default under the note or notes, accelerate the maturity of the note or notes, enforce the note or notes and any guarantees and credit support in a reasonable manner for the benefit of all persons owning the note or notes, and foreclose and otherwise enforce the lien instrument for the benefit of all persons owning the note or notes. After first deducting the reasonable costs of enforcement from the proceeds received, the net proceeds of the enforcement and foreclosure shall be distributed proportionately among all persons owning the note or notes. Once a majority in interest of the persons owning the note or notes have commenced enforcement and foreclosure of the note or notes and lien instrument, the majority in interest shall have the exclusive right to seek enforcement and foreclosure until they stop diligently and continuously pursuing enforcement and foreclosure of the note or notes and lien instrument.

(b) The provisions of subsection (a) of this section shall not apply to a participation arrangement among the persons owning the interests in a note or notes secured by a lien instrument unless an undivided ownership interest in the note or notes is assigned, endorsed, or transferred to such persons.

Sec. 212. Independent trustee or assignee for foreclosure required for noteowner, beneficiary, mortgagee, or secured party to bid at a power of sale foreclosure.

(a) No trustee of a deed of trust or assignee for foreclosure in a mortgage is required to be independent, as defined in section 301(d), until the sending or recording among the land records of the notice of commencement of foreclosure under section 502(b). Prior to the sending of the notice of commencement of foreclosure, the trustee or mortgagee or assignee for foreclosure may be related in any manner to the noteowner, beneficiary or mortgagee.

(b) In order for the noteowner, beneficiary, mortgagee, or secured party to bid at a power of sale foreclosure, each trustee in the deed of trust or the assignee for foreclosure of the mortgage or secured party must be independent, as defined in section 301(d), from and after the sending or recording among the land records of the notice of commencement of foreclosure under section 502(b). The substitution of one or more independent trustees under a deed of trust or assignment of the mortgage or security agreement to an independent assignee for foreclosure before the sending or recording among the land records of the notice of commencement of foreclosure shall satisfy the requirement that the trustee or assignee for foreclosure be independent.

Sec. 213. Right to determine reasonable foreclosure sale terms and conditions if deed of trust or mortgage does not state them.

If a deed of trust or mortgage does not specify the terms and conditions for foreclosure,

a trustee of the deed of trust or assignee for foreclosure of the mortgage may determine reasonable and fair terms and conditions of such foreclosure sale for the missing terms and conditions consistent with this act and all other legal requirements. Subject to all other limitations in this act, the trustee or assignee for foreclosure shall be permitted to hold a power of sale foreclosure, notwithstanding the absence of express authority in the deed of trust or mortgage to hold a power of sale foreclosure. If the trustee or assignee for foreclosure is unable or unwilling to determine the missing terms and conditions of the foreclosure sale, any trustee, assignee for foreclosure, noteowner, beneficiary, borrower, or owner may apply to the Superior Court before the foreclosure sale is advertised to fix the terms and conditions of the foreclosure sale.

Sec. 214. Deed-in-lieu of foreclosure or deed to noteowner's designee; no effect on senior or subordinate interests.

(a) At any time after an uncured default in a note secured by a deed of trust or mortgage, the owner of the real property and noteowner under the deed of trust or mortgage may agree to a transfer of the owner's interest in the real property in lieu of foreclosure. The agreement between the noteowner and owner may obligate the owner to convey the owner's interest in the real property to:

- (1) The noteowner in a deed-in-lieu of foreclosure with the deed of trust or mortgage being cancelled; or
- (2) The noteowner's designee in a deed, subject to, and without canceling the deed of trust or mortgage.

(b) In an agreement and conveyance described in subsection (a) of this section, the noteowner and owner may agree to:

(1) A release and discharge of all owners and borrowers from personal liability under the note secured by the deed of trust or mortgage; or

(2) Payment of a deficiency amount to the noteowner by the owners and borrowers under the note who are parties to the agreement based on:

(A) A credit for the fair market value of the residential real property being conveyed less any unreleased liens encumbering the residential real property when a deed-in-lieu of foreclosure is being granted under subsection (a)(1) of this section; or

(B) A credit for the fair market value of the residential real property being conveyed less only those liens senior in priority to the noteowner's deed of trust or mortgage when a deed to the noteowner's designee is being granted under subsection (a)(2) of this section; or

(C) A credit for the value of the real property being conveyed which is not residential real property on any basis agreed to by the parties to the agreement described in subsection (a) of this section.

(3) If the parties to the agreement described in subsection (a) of this section

cannot agree on the deficiency amount for residential real property, they may elect jointly to have the Superior Court determine the fair market value of the residential real property and the amount of the deficiency in accordance with this paragraph (2)(A) or (2)(B) of this subsection.

(c) No deed-in-lieu of foreclosure or deed to the noteowner's designee pursuant to subsection (a) of this section shall affect the rights of any:

(1) Other noteowner, trustee, beneficiary or mortgagee secured by a lien instrument encumbering the same real property, unless such noteowner, trustee, beneficiary or mortgagee agrees to such effect;

(2) Subordinate interest holder with an interest in the same real property, unless the subordinate interest holder agrees to such effect; or

(3) Person holding an interest in the same real property that is senior in priority to the lien instrument for the deed-in-lieu of foreclosure or deed to the noteowner's designee.

**Sec. 215. Redemption from noteowner by performance or tender.**

(a) Except as provided in subsection (c) of this section, payment and performance in full of the note secured by a lien instrument, or payment or performance that is accepted by the noteowner in lieu of full payment and performance by the borrower or owner who is primarily responsible for payment and performance of the note, redeems the real property and personal property from the lien instrument, terminates the accrual of interest on the note, and extinguishes the lien instrument. Except as restricted by agreement of the noteowner and borrower or owner, subject to the requirements of section 216(a), (b) and (c), performance may be made prior to the time the note is due, or may be made at or after the time the note is due but prior to the completion of the foreclosure sale auction for the lien instrument.

(b) An unconditional tender of payment and performance in full by the person who is primarily responsible for the note, even if rejected by the noteowner, if kept good, has the effect of payment and performance in full under subsection (a) of this section and requires the issuance of a release document under section 219. The rejection by the noteowner shall not cause or permit a waiver or bar to the noteowner's later receipt of the payment and performance from the unconditional tender.

(c) Performance under subsection (a) of this section does not extinguish a lien instrument or require the issuance of a release document under section 219 if the person performing and noteowner agree in writing that the lien instrument is to remain in existence for good reason, including the expiration of preference periods.

(d) Payment and performance in full of the note secured by a lien instrument, or a partial payment and performance of the note secured by a lien instrument that is accepted by the noteowner in lieu of full payment and performance, by a subordinate interest holder in the real property encumbered by the noteowner's lien instrument who is not primarily responsible for performance, does not extinguish the note or lien instrument, but redeems the interest of the subordinate interest holder from the lien instrument and entitles the subordinate interest holder to

subrogation to the note and lien instrument under the principles of section 227. Such performance may not be made until the obligation secured by the lien instrument is due, but may be made at or after the time the note is due but prior to the completion of the foreclosure sale auction for the lien instrument.

(e) Upon receipt of performance as provided in subsection (d) of this section and at the request of the owner of the real property encumbered by the lien instrument, the noteowner shall provide to the performing subordinate interest holder, within a reasonable time, an endorsement or assignment, without recourse or warranties, of the note, with or without an assignment of any separate guaranties, and a certificate of transfer of the lien instrument in proper form for recordation. If the noteowner fails to do so upon reasonable request, the performing subordinate interest holder may obtain judicial relief ordering the note and lien instrument assigned and, unless the noteowner acted in good faith in rejecting the request, awarding the performing subordinate interest holder the penalties damages and costs described in section 219(c) on the same basis as if the lien instrument should have been released rather than assigned.

(f) An unconditional tender of payment and performance in full by a subordinate interest holder described in subsection (d) of this section, even if rejected by the noteowner, if kept good, has the effect of payment and performance in full under subsections (d) and (e) of this section. The rejection by the noteowner shall not cause or permit a waiver or bar to the noteowner's later receipt of the payment and performance from the unconditional tender.

**Sec. 216. Prepayment of note secured by lien instrument.**

(a) In the absence of an agreement restricting or prohibiting payment of the note secured by a lien instrument prior to maturity, the borrower or owner has a right to make such payment in whole or in part at any time. Unless the note or lien instrument provides otherwise, no prepayment of a note shall entitle the borrower or owner to a reduction in the monthly or scheduled payments due under the note.

(b) A note secured by a residential lien instrument encumbering only a one to 4 family dwelling may be prepaid in whole or in part at any time without premium, fee, or extra-ordinary charge. Any restriction or prohibition on prepayment in a note secured by a residential lien instrument encumbering only a one to 4 family dwelling or in the residential lien instrument shall be void and unenforceable.

(c) Subject to the general requirement of good faith and fair dealing, the power of courts to refuse enforcement of unconscionable contract terms, and other applicable law:

(1) An agreement that prohibits payment of the note secured by a lien instrument, other than a residential lien instrument encumbering only a one to 4 family dwelling, prior to maturity is enforceable; and

(2) Except as provided in subsection (e) of this section, an agreement that requires the borrower or owner to pay a fee or charge as a condition of the payment of a note secured by a lien instrument, other than a residential lien instrument encumbering only a one to 4

family dwelling, prior to maturity is enforceable.

(d)(1) Notwithstanding an agreement of the type described in subsection (c) of this section, except for lien instruments described in subsection (e) of this section, the owner shall have a right to the release of the lien instrument encumbering the real property, if the owner gives the noteowner substitute security that is:

- (A) Substantially the equivalent of cash;
- (B) Equal in value to the lien instrument obligation and any associated

fees; and

(C) Sufficient to make all scheduled payments of principal, interest, mortgage insurance premiums, and other amounts due the noteowner assuming no default under and no prepayment of the note.

(2) The owner shall pay all costs associated with the substitution and release of the lien instrument. The owner and noteowner may agree that security other than the substantial equivalent of cash may be substituted. Except for lien instruments described in subsection (e) of this section, the noteowner and owner may not agree to deny to the owner the right of substitution of security for the lien on real property.

(e) Subsection (d) of this section shall not apply to any lien instrument:

(1) That secures a note which is prepayable in whole at any time without premium, fee, or extraordinary charge, whether by its original terms or by a permanent waiver of the prepayment restriction by the noteowner; or

(2) That secures an obligation described in section 202(c); or

(3) Which is included in a pool of mortgages pursuant to a structured financing arrangement where the substitution of collateral and release of the lien instrument under subsection (d) of this section would materially impair the taxable status of the mortgage pooling arrangement under the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*), as reasonably determined by the noteowner's professional tax advisor.

(f) Notwithstanding an agreement of the type described in subsection (c) of this section, the obligation in a note or lien instrument to pay an additional fee or charge in any agreement that requires the owner to pay an additional fee or charge is not enforceable if:

(1) Payment of the note secured by a lien instrument is being made with the proceeds of casualty insurance or a taking in eminent domain or a bona fide sale to an entity with the power of eminent domain in lieu of a taking; and

(2) The owner requests that the proceeds from the casualty insurance, eminent domain or sale in lieu of a taking be used for restoration of the real property and the owner is entitled to use the proceed for such purpose under the standards of section 510.

Sec. 217. Release of lien instrument after time period when no enforcement.

(a) Except as otherwise provided in subsection (b) of this section, the note secured by a

lien instrument shall be deemed conclusively to have been paid and satisfied in full and the lien instrument shall be deemed conclusively to have been fully released, without any action on the part of any party to the lien instrument, as of the last day of the period referred to in subsection (a)(1) or (a)(2) of this section, and the lien instrument shall no longer constitute a lien on, or be enforceable against, the real property if:

(1) The lien instrument is not released from the real property by an instrument recorded among the land records within 12 years after the maturity date stated in or ascertainable from the lien instrument for the note secured by the lien instrument; or

(2) The lien instrument is not released from the real property by an instrument recorded among the land records within 35 years after the later date of recordation among the land records of the lien instrument or the last amendment, modification, or extension of the lien instrument, and no determinable maturity date for the note secured by the lien instrument is stated in or ascertainable from the lien instrument or any amendment, modification, or extension of the lien instrument.

(b) Subsection (a) of this section shall not apply if:

(1) A notice of commencement of foreclosure under section 502 with respect to the lien instrument has been recorded among the land records more than 60 days before the expiration of the 12 year or 35 year time period in subsection (a)(1) or (a)(2) of this section; or

(2) A proceeding to enforce the lien instrument is pending in a court of competent jurisdiction before the expiration of the 12 year or 25 year time period in subsection (a)(1) or (a)(2) of this section.

Sec. 218. Authorized forms of release of lien instrument.

(a) A lien instrument securing a note which has been fully paid or fully satisfied or cancelled may be released as a lien on the real property by recording among the land records the note affidavit described in this subsection and the original note, marked "paid" or "satisfied" or "cancelled" by the noteowner or person authorized to give the note affidavit described in this subsection. The recordation among the land records of the required note affidavit with the original note marked by the noteowner attached shall be effective to release the lien instrument as a lien on the real property with the same effect as a certificate of satisfaction recorded pursuant to subsection (c) of this section. In order to release the lien instrument, the original note shall be attached to a note affidavit executed by the noteowner, or by an attorney who is a member in good standing of the District of Columbia Bar and who disbursed funds in payment of the note, or an officer of the title insurance company or underwriter appointed title insurance agent which disbursed funds in payment of the note, stating that the note has been fully paid or fully satisfied or cancelled and releasing the lien instrument as a lien on the real property. The note affidavit shall identify and describe the note and lien instrument by stating the date, the parties, the recording information for the lien instrument, and the assessment and taxation lot and square numbers for the real property.

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(b) The note affidavit described in subsection (a) of this section shall conform substantially to the following with the proviso that information designated as “optional” and printed in italics is requested, if known, but shall not be required:

**"NOTE AFFIDAVIT**

**"WITH PAID OR SATISFIED OR CANCELLED NOTE ATTACHED**

**"KNOW ALL PERSONS BY THESE PRESENTS:**

The undersigned hereby certifies under penalties of perjury that:

1. The undersigned is {the original payee or obligee [or the subsequent assignee] and owner} {an attorney who is a member in good standing of the D.C. Bar and who disbursed funds in payment} {an officer of the title insurance company or validly licensed title insurance agent which disbursed funds in payment} of the note or other obligation identified below which is secured by the deed of trust, mortgage, vendor’s lien, or other lien instrument identified below;

2. The undersigned is duly authorized to make this affidavit;

3. The note or other obligation identified below has been fully paid or fully satisfied or cancelled;

4. The original note or other obligation identified below is attached to this note affidavit and has been marked “paid” or “satisfied” or “cancelled;”

5. Due to the payment or satisfaction or cancellation of the original note or other obligation identified below, the lien instrument identified below is fully released and discharged as a lien on the real property described in the lien instrument.

6. The note or other obligation and deed of trust, mortgage, vendor’s lien, or other lien instrument are identified below:

Name of Lien Instrument: \_\_\_\_\_  
(i.e., “Deed of Trust” or “Mortgage” or “Vendor’s Lien”)

Date of Lien Instrument: \_\_\_\_\_

Real Property Encumbered: Assessment and Taxation Lot No(s). \_\_\_\_\_, Square No. \_\_\_\_\_, (Optional: Recorded Lot No(s). \_\_\_\_\_,)

[Optional: per Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Records of the Office of the Surveyor of the District of Columbia] (Optional: Attach Legal Description if more complex than recorded lot and square numbers)

(Optional: Original Amount Secured (if applicable): \_\_\_\_\_)

Instrument Number (or Liber and folio) of Recorded Lien Instrument: \_\_\_\_\_

Date or Year of Recording Lien Instrument: \_\_\_\_\_

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Prior Certificate(s) of Transfer: \_\_\_\_\_)

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Amendments, Modifications, Extensions, Supplements, Etc. to Lien Instrument: \_\_\_\_\_)

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Name (and Address, if known,) of Original Grantor/Mortgagor/Obligor: \_\_\_\_\_

Name (and Address, if known,) of Original Trustee(s), if applicable: \_\_\_\_\_

Name (and Address, if known,) of Original Beneficiary/Mortgagee/Obligee: \_\_\_\_\_

Name (and address, if known,) of Noteowner: \_\_\_\_\_

Name and Address of Person Giving Affidavit: \_\_\_\_\_

WITNESS the hand and seal of the undersigned [noteowner, attorney, or title officer] this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Print name, title, entity name, etc.]

[Note: Conform execution and acknowledgement for requirements applicable to person giving affidavit.]

DISTRICT/STATE OF \_\_\_\_\_ )

) ss:

CITY/COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared this date, \_\_\_\_\_, who executed the foregoing and annexed Note Affidavit dated \_\_\_\_\_, 20\_\_\_\_, who, being by me first duly sworn, did acknowledge such Note Affidavit to be his/her/its act and deed for the uses and purposes therein contained.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_"

(c) A lien instrument securing a note which has been fully paid or fully satisfied or cancelled may be released as a lien on the real property by recording among the land records the certificate of satisfaction described in this subsection by the noteowner or beneficiary or trustee or assignee for foreclosure named in the lien instrument. The recordation among the land records of the required certificate of satisfaction shall be effective to release the lien instrument as a lien on all the real property. In order to release the lien instrument, the certificate of satisfaction shall state that the note has been fully paid or fully satisfied or cancelled and the lien instrument is released as a lien on the real property. The certificate of satisfaction shall identify and describe the note and lien instrument by stating the date, the parties, the recording information for the lien instrument, and the assessment and taxation lot and square numbers for the real property.

(d) The certificate of satisfaction described in subsection (c) of this section shall conform

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substantially to the following with the proviso that information designated as “optional” and printed in italics is requested, if known, but shall not be required:

**"CERTIFICATE OF SATISFACTION**

**"WITHOUT PAID OR SATISFIED OR CANCELLED NOTE ATTACHED**

**"KNOW ALL PERSONS BY THESE PRESENTS:**

The undersigned hereby certifies under penalties of perjury that:

1. The undersigned is {the original payee or obligee [or the subsequent assignee] and owner of the note or other obligation identified below } {the [trustee] [beneficiary] [assignee for foreclosure] named in the deed of trust, mortgage, vendor’s lien, or other lien instrument identified below which secures the note or other obligation identified below};

2. The undersigned is duly authorized to execute and deliver this certificate of satisfaction;

3. The note or other obligation identified below has been fully paid or fully satisfied or cancelled;

4. Due to the payment or satisfaction or cancellation of the original note or other obligation identified below, the lien instrument identified below is fully released and discharged as a lien on the real property described in the lien instrument.

5. The note or other obligation and deed of trust, mortgage, vendor’s lien, or other lien instrument are identified below:

Name of Lien Instrument: \_\_\_\_\_

(*i.e.*, “Deed of Trust” or “Mortgage” or “Vendor’s Lien”)

Date of Lien Instrument: \_\_\_\_\_

Real Property Encumbered: Assessment and Taxation Lot No(s). \_\_\_\_\_, Square No. \_\_\_\_\_, (*Optional: Recorded Lot No(s). \_\_\_\_\_,*)

*[Optional: per Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Records of the Office of the Surveyor of the District of Columbia] (Optional: Attach Legal Description if more complex than recorded lot and square numbers)*

*(Optional: Original Amount Secured (if applicable): \_\_\_\_\_)*

Instrument Number (or Liber and folio) of Recorded Lien Instrument: \_\_\_\_\_

Date or Year of Recording Lien Instrument: \_\_\_\_\_

*(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Prior Certificate(s) of Transfer: \_\_\_\_\_)*

*(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Amendments, Modifications, Extensions, Supplements, Etc. to Lien Instrument: \_\_\_\_\_)*

Name (*and Address, if known,*) of Original Grantor/Mortgagor/Obligor: \_\_\_\_\_

Name (*and Address, if known,*) of Original Trustee(s), if applicable: \_\_\_\_\_

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Name (and Address, if known,) of Original Beneficiary/Mortgagee/Obligee: \_\_\_\_\_

\_\_\_\_\_  
Name (and address, if known,) of Noteowner: \_\_\_\_\_

Name and Address of Person Giving Affidavit: \_\_\_\_\_

WITNESS the hand and seal of the undersigned [noteowner, trustee, beneficiary, or assignee for foreclosure] this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Print name, title, entity name, etc.]

[Note: Conform execution and acknowledgement for requirements applicable to person giving affidavit.]

DISTRICT/STATE OF \_\_\_\_\_ )

) ss:

CITY/COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared this date, \_\_\_\_\_, who executed the foregoing and annexed Certificate of Satisfaction dated \_\_\_\_\_, 20\_\_\_\_, who, being by me first duly sworn, did acknowledge such Certificate of Satisfaction to be his/her/its act and deed for the uses and purposes therein contained.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_"

(e) A lien instrument securing a note which has been partially paid or partially satisfied or partially cancelled in a manner sufficient to entitle the owner to a release of a portion of the real property encumbered by the lien instrument may be released as a lien on the portion of real property by recording among the land records the certificate of partial satisfaction described in this subsection by the noteowner or beneficiary or trustee or assignee for foreclosure named in the lien instrument. The recordation among the land records of the required certificate of partial satisfaction shall be effective to release the lien instrument as a lien on only that portion of the real property identified as being released and shall not release the lien instrument from any other real property. In order to partially release the lien instrument, the certificate of partial satisfaction shall state that the note has been sufficiently paid or sufficiently satisfied or sufficiently cancelled to entitle the owner to the partial release and the lien instrument is released as a lien on only the released real property described in the certificate of partial satisfaction but not as to any other real property. The certificate of partial satisfaction shall identify and describe the note and lien instrument by stating the date, the parties, the recording information for the lien

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instrument, the assessment and taxation lot and square numbers for the real property, and a description of the real property being released.

(f) The certificate of partial satisfaction described in subsection (e) of this section shall conform substantially to the following with the proviso that information designated as “optional” and printed in italics is requested, if known, but shall not be required:

**"CERTIFICATE OF PARTIAL SATISFACTION**

**"WITHOUT NOTE ATTACHED**

**"KNOW ALL PERSONS BY THESE PRESENTS:**

The undersigned hereby certifies under penalties of perjury that:

1. The undersigned is {the original payee or obligee [or the subsequent assignee] and owner of the note or other obligation identified below } {the [trustee] [beneficiary] [assignee for foreclosure] named in the deed of trust, mortgage, vendor’s lien, or other lien instrument identified below which secures the note or other obligation identified below};

2. The undersigned is duly authorized to execute and deliver this certificate of partial satisfaction;

3. The note or other obligation identified below has been partially paid or partially satisfied or partially cancelled in a manner that entitles the owner of the released real property identified below to its release from the deed of trust, mortgage, vendor’s lien, or other lien instrument identified below;

4. Due to the partial payment or partial satisfaction or partial cancellation of the original note or other obligation identified below, the lien instrument identified below is released and discharged as a lien on only the released real property described below and the lien of the lien instrument is not released from any other real property.

5. The note or other obligation, deed of trust, mortgage, vendor’s lien, or other lien instrument, and released real property are identified below:

Name of Lien Instrument: \_\_\_\_\_

(*i.e.*, “Deed of Trust” or “Mortgage” or “Vendor’s Lien”)

Date of Lien Instrument: \_\_\_\_\_

Real Property Being Released: Assessment and Taxation Lot No(s). \_\_\_\_\_,  
Square No. \_\_\_\_\_, (*Optional: Recorded Lot No(s).* \_\_\_\_\_,)

[*Optional: per Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Records of the Office of the Surveyor of the District of Columbia*] (Attach Legal Description if more complex than recorded lot and square numbers)

[Note: Conform legal description of Real Property Being Released to only the released real property, not the real property encumbered by the Lien Instrument.]

(*Optional: Original Amount Secured (if applicable):* \_\_\_\_\_)

Instrument Number (or Liber and folio) of Recorded Lien Instrument: \_\_\_\_\_

Date or Year of Recording Lien Instrument: \_\_\_\_\_

(*Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Prior*

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Certificate(s) of Transfer: \_\_\_\_\_ )  
(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of  
Amendments, Modifications, Extensions, Supplements, Etc. to Lien Instrument: \_\_\_\_\_ )

Name (and Address, if known,) of Original Grantor/Mortgagor/Obligor: \_\_\_\_\_

Name (and Address, if known,) of Original Trustee(s), if applicable: \_\_\_\_\_

Name (and Address, if known,) of Original Beneficiary/Mortgagee/Obligee: \_\_\_\_\_

Name (and address, if known,) of  
Noteowner: \_\_\_\_\_

Name and Address of Person Giving Affidavit: \_\_\_\_\_

WITNESS the hand and seal of the undersigned [noteowner, trustee, beneficiary, or  
assignee for foreclosure] this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Print name, title, entity name, etc.]

[Note: Conform execution and acknowledgement for requirements applicable to person giving  
affidavit.]

DISTRICT/STATE OF \_\_\_\_\_ )

) ss:

CITY/COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared this  
date, \_\_\_\_\_, who executed the foregoing and annexed  
Certificate of Partial Satisfaction dated \_\_\_\_\_, 20\_\_\_\_, who, being by me first duly  
sworn, did acknowledge such Certificate of Partial Satisfaction to be his/her/its act and deed for  
the uses and purposes therein contained.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_"

(g) A lien instrument securing a lost, misplaced, or destroyed note which has been fully  
paid and satisfied or cancelled may be released as a lien on the real property by recording among  
the land records the release affidavit described in this subsection. The recordation of the release  
affidavit among the land records shall be effective to release the lien instrument as a lien on the  
real property with the same effect as a certificate of satisfaction recorded pursuant to  
subsection (c) of this section. The release affidavit shall identify and describe the note and lien

instrument by stating the date, the parties, the recording information for the lien instrument, and the assessment and taxation lot and square numbers for the real property. The release affidavit shall be executed and acknowledged by the noteowner of the lost, misplaced, or destroyed note or the beneficiary or trustee or assignee for foreclosure named in the lien instrument and shall state that:

- (1) The note has been fully paid and satisfied or cancelled;
- (2) The noteowner is the owner of the note and, to the actual knowledge of the affiant if the affiant is not the noteowner, neither the note nor any interest therein has been transferred, assigned, or negotiated to any other person;
- (3) The noteowner or the affiant has been unable to locate the original note despite a diligent search, and the original note has been lost, misplaced, or destroyed;
- (4) If the affiant is the noteowner, then the noteowner indemnifies the borrower and owner of and from any loss, damage, or expense caused by the attempted wrongful enforcement of the original note or lien instrument; and
- (5) The noteowner or affiant releases the lien instrument as a lien on the real property described in the lien instrument.

(h) The release affidavit described in subsection (g) of this section shall conform substantially to the following with the proviso that information designated as “optional” and printed in italics is requested, if known, but shall not be required:

**"RELEASE AFFIDAVIT**

**"FOR LOST, MISPLACED, OR DESTROYED NOTE**

**"KNOW ALL PERSONS BY THESE PRESENTS:**

The undersigned hereby certifies under penalties of perjury that:

1. The undersigned is {the original payee or obligee [or the subsequent assignee] and owner of the note or other obligation identified below } {the [trustee] [beneficiary] [assignee for foreclosure] named in the deed of trust, mortgage, vendor’s lien, or other lien instrument identified below which secures the note or other obligation identified below};
2. The undersigned is duly authorized to make this affidavit;
3. The undersigned or noteowner identified below is the owner of the note or other obligation identified below;
4. Neither, the note or other obligation identified below, nor any interest therein has been transferred, assigned or negotiated to any other person, which statement is made to the actual knowledge of the undersigned if the undersigned is not the noteowner,;
5. The note or other obligation identified below has been fully paid and satisfied or cancelled;
6. The undersigned has been unable to locate the original note or other obligation identified below despite a diligent search, and such original note or other obligation has been lost, misplaced, or destroyed;
7. If the undersigned is the noteowner, then the undersigned hereby indemnifies the

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original maker of such note or other obligation identified below, all persons liable on such note or other obligation and the owner of the real property encumbered by the lien instrument identified below of and from any loss, damage or expense caused by the attempted wrongful enforcement of such note or other obligation or lien instrument;

8. The undersigned hereby fully releases and discharges the lien instrument identified below as a lien on the real property described in the lien instrument.

9. The note or other obligation and deed of trust, mortgage, vendor’s lien, or other lien instrument are identified below:

Name of Lien Instrument: \_\_\_\_\_

(i.e., “Deed of Trust” or “Mortgage” or “Vendor’s Lien”)

Date of Lien Instrument: \_\_\_\_\_

Real Property Encumbered: Assessment and Taxation Lot No(s). \_\_\_\_\_, Square No. \_\_\_\_\_, (Optional: Recorded Lot No(s). \_\_\_\_\_,)

[Optional: per Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ among the Records of the Office of the Surveyor of the District of Columbia] (Optional: Attach Legal Description if more complex than recorded lot and square numbers)

(Optional: Original Amount Secured (if applicable): \_\_\_\_\_)

Instrument Number (or Liber and folio) of Recorded Lien Instrument: \_\_\_\_\_

Date or Year of Recording Lien Instrument: \_\_\_\_\_

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Prior Certificate(s) of Transfer: \_\_\_\_\_)

(Optional: Instrument Number(s) [or Liber and folio] and Date/Year of Recording of Amendments, Modifications, Extensions, Supplements, Etc. to Lien Instrument: \_\_\_\_\_)

Name (and Address, if known,) of Original Grantor/Mortgagor/Obligor: \_\_\_\_\_

Name (and Address, if known,) of Original Trustee(s), if applicable: \_\_\_\_\_

Name (and Address, if known,) of Original Beneficiary/Mortgagee/Obligee: \_\_\_\_\_

Name (and address, if known,) of Noteowner: \_\_\_\_\_

Name and Address of Person Giving Affidavit: \_\_\_\_\_

WITNESS the hand and seal of the undersigned [noteowner, trustee, beneficiary, or assignee for foreclosure] this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Print name, title, entity name, etc.]

[Note: Conform execution and acknowledgement for requirements applicable to person giving affidavit.]

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DISTRICT/STATE OF \_\_\_\_\_ )

) ss:

CITY/COUNTY OF \_\_\_\_\_ )

Before me, a Notary Public, in and for the jurisdiction aforesaid, personally appeared this date, \_\_\_\_\_, who executed the foregoing and annexed Release Affidavit dated \_\_\_\_\_, 20\_\_\_\_, who, being by me first duly sworn, did acknowledge such Release Affidavit to be his/her/its act and deed for the uses and purposes therein contained.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission Expires: \_\_\_\_\_"

(i) Nothing in this section shall limit the effectiveness of a deed of full or partial release that is executed in the same manner as a deed absolute by the trustee named in a deed of trust or the mortgagee named in a mortgage and recorded among the land records. Such deed of full or partial release shall identify and describe the note and lien instrument by stating the date, the parties, the recording information for the lien instrument, the lot and square numbers for the real property, a legal description of the real property if it is not comprised solely of recorded lots, and a description of the real property being released.

(j) If a lien instrument is fully released as a lien on all the real property encumbered by the lien instrument, the release of the lien instrument shall be deemed automatically to release any ancillary lien instrument that secures the same note secured by the lien instrument. This provision shall not apply if the release affidavit or certificate of satisfaction or note affidavit or deed of release or other release instrument recorded among the land records expressly states that the release of the lien instrument shall not release one or more specifically identified ancillary lien instruments.

**Sec. 219. Noteowner’s obligation to provide release of lien instrument.**

(a) Every noteowner has a duty to promptly execute, acknowledge, deliver, and, for a residential lien instrument, deliver to the Recorder of Deeds with the costs of recording or, if requested, to the title company, title agent or attorney handling the payoff of the residential lien instrument, a release instrument in proper form for recordation for every lien instrument that has been paid or satisfied in full. When the paid or satisfied note is secured by a residential lien instrument, the noteowner shall also deliver the release instrument to the Recorder of Deeds with the costs of recording or, if requested, to the title company, title agent or attorney handling the payoff of the residential lien instrument, in a manner which provides a signed receipt for the delivery, for recording the release instrument among the land records within the 30 days after receipt of payment or satisfaction. When a note is paid or satisfied in full, the noteowner shall,

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within 30 days after receipt of payment or within 30 days after satisfaction:

(1) Execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, to the person making payment or causing the note to be satisfied, one or more of the release affidavit or certificate of satisfaction or note affidavit or deed of release or other release instrument, in one of the forms authorized in section 218, sufficient to fully release the lien instrument securing such note as a lien against the real property described in the lien instrument;

(2) If the paid or satisfied note is secured by a residential lien instrument, deliver the release affidavit or certificate of satisfaction or note affidavit or deed of release or other release instrument to the Recorder of Deeds with the costs of recording or, if requested, to the title company, title agent or attorney handling the payoff of the residential lien instrument, in a manner which provides a signed receipt for the delivery, for recording among the land records; and

(3) Deliver to the person making the payment or satisfaction the original note marked "paid" or "cancelled" or "satisfied," as appropriate, with the noteowner's signature and date or a completed lost note affidavit as provided in section 218(g).

(b) Every noteowner has a duty to promptly execute, acknowledge, deliver, and, for a residential lien instrument, deliver to the Recorder of Deeds with the costs of recording or, if requested, to the title company, title agent or attorney handling the partial prepayment of the residential lien instrument, a partial release instrument in proper form for recordation for every lien instrument that has been sufficiently paid or satisfied to entitle the owner of any real property encumbered by the lien instrument to a partial release of certain real property from the lien instrument, so long as the note or lien instrument or a separate agreement binding on the noteowner specifically provides for the partial release. When a note is paid or satisfied in part, and if, by the terms of the note, the lien instrument securing the note, or a separate agreement binding on the noteowner, the person making the partial payment or causing the partial satisfaction to be made is entitled to a release of a part of the real property encumbered by the lien instrument, the noteowner shall, within 30 days after receipt of sufficient payment or satisfaction:

(1) Execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, to the person making the partial payment or causing the note to be partially satisfied, one or more of the certificate of partial satisfaction or deed of partial release or other partial release instrument, in one of the forms authorized in section 218, sufficient to partially release the lien instrument securing such note as a lien against part of the real property encumbered by the lien instrument which the noteowner is obligated by the terms of the note, the lien instrument, or the separate agreement binding on the noteowner, to release on account of the partial payment or satisfaction; and

(2) If the partially paid or satisfied note is secured by a residential lien instrument, deliver the certificate of partial satisfaction or deed of partial release or other partial

release instrument to the Recorder of Deeds with the costs of recording or, if requested, to the title company, title agent or attorney handling the payoff of the residential lien instrument, in a manner which provides a signed receipt for the delivery, for recording among the land records.

(c) If a noteowner with a duty described in subsections (a) or (b) of this section fails to perform the noteowner's duty within the specified time period and in the manner required by subsections (a) or (b) of this section, and if the noteowner's failure continues for more than 30 days after the noteowner is sent a notice in accordance with section 401 or receives a subsequent written request and notice for the full or partial release sent after the date of full or partial payment or satisfaction from a person entitled to the release, then the noteowner shall be liable to and shall promptly pay the person requesting and entitled to the release the following amounts:

(1) Commencing with and including the 31st day after the noteowner receives or is deemed to have received a written request for the release and ending on, but not including, the day on which the noteowner fully complies with its duty under subsections (a) or (b) of this section, a delay fee in the amount of \$50 for every day the Recorder of Deeds is open for business during such period, not to exceed \$10,000; and

(2) All actual, direct and consequential damages caused by the noteowner's failure to perform the noteowner's duty within the specified time period and in the manner required by subsections (a) or (b) of this section; and

(3) All costs and expenses, including reasonable attorneys fees and disbursements, relating to or arising out of the enforcement of such person's rights under subsection (c) of this section.

**Sec. 220. Effective date of noteowner's receipt of payments.**

(a) A payment on a note secured by a lien instrument in the form of an electronic transfer of immediately available funds to an account in a commercial bank, savings bank, savings and loan association, thrift, credit union, or similar financial institution shall be deemed to be made and received by the noteowner no later than the banking day the financial institution confirms receipt of the funds to the owner of the account.

(b) A payment on a note secured by a lien instrument in the form of a check issued or certified by a federally chartered or state chartered bank or thrift shall be deemed to be made and received not later than the day of actual receipt of the check by the noteowner or the noteowner's designated agent or designated loan servicer to whom the borrower or owner has been directed in writing to make payments to.

(c) A payment on a note secured by a lien instrument in the form of a check that is not issued or certified by a federally chartered or state chartered bank or thrift shall be deemed to be made and received no later than the first day on which the noteowner or the noteowner's designated agent or designated loan servicer to whom the borrower or owner has been directed in writing to make payments to actually receives the proceeds of collection of the check in

immediately available funds. The delay in collection of a check that is not issued or certified by a federally chartered or state chartered bank or thrift after receipt of the check shall not be used to create or declare a default under a note or lien instrument if the check is received before the payment deadline and honored when first presented for payment.

Sec. 221. When deed absolute, conditional sale, or contract for a deed will be considered a lien instrument.

(a) From the time the note secured by a lien instrument becomes due and payable until the time the foreclosure sale auction under the lien instrument is completed, a borrower, owner and subordinate interest holder shall have the right to redeem the real property from the lien instrument under the provisions of sections 215 and 407. An agreement in, or created contemporaneously with, a lien instrument that: (1) impairs the borrower's, owner's or subordinate interest holder's right of redemption under section 215 is ineffective; and (2) confers on the noteowner, beneficiary, mortgagee or obligee an interest in the borrower's or owner's real property does not violate this subsection unless the effectiveness of the agreement is expressly dependent on a borrower or owner default under the note or lien instrument.

(b) Whether a deed is a deed absolute or a lien instrument shall be determined in accordance with the following principles and standards:

(1) Parol evidence shall be admissible to establish that a deed purporting to be an absolute conveyance of real property was intended to serve as security for an obligation and should therefore be deemed a lien instrument. The obligation receiving the security may have been created prior to or contemporaneous with the conveyance and need not be the personal liability of any person.

(2) It must be proved by clear and convincing evidence that the parties to the deed intended that the deed serve as security for an obligation. The intent of the parties may be inferred from the totality of the circumstances, including the following factors:

- (A) Statements of the parties;
- (B) The presence of a substantial disparity between the value received by the grantor and the fair market value of the real property at the time of the conveyance;
- (C) The grantor retained possession of the real property after the conveyance;
- (D) The grantor continued to pay real estate taxes on the real property after the conveyance;
- (E) The grantor made post-conveyance improvements to the real property; and
- (F) The nature of the parties and their relationship prior to and after the conveyance.

(3) Where, in addition to the deed referred to in subsection (b)(1) of this section, a separate writing exists indicating that the deed was intended to serve as security for an

obligation, parol evidence may be admitted to establish that the writings constitute a single security transaction.

(c) Whether a deed is a conditional sale or a lien instrument will be determined in accordance with the following principles and standards:

(1) Parol evidence is admissible to establish that a deed purporting to be an absolute conveyance of real property, accompanied by a written agreement conferring on the grantor a right to repurchase the real property, was intended to serve as a security for an obligation and should therefore be deemed a lien instrument. The obligation receiving the security or repurchase right may have been created prior to or contemporaneous with the conveyance and need not be the personal liability of any person.

(2) It must be proved by clear and convincing evidence that the parties to the deed intended that the deed serve as security for an obligation. The intent of the parties may be inferred from the totality of the circumstances, including the following factors:

- (A) Statements of the parties;
- (B) The presence of a substantial disparity between the value received by the grantor and the fair market value of the real property at the time of the conveyance;
- (C) The terms on which the grantor may re-purchase the real property;
- (D) The grantor retained possession of the real property after the conveyance;
- (E) The grantor continued to pay real estate taxes on the real property after the conveyance;
- (F) The grantor made post-conveyance improvements to the real property; and
- (G) The nature of the parties and their relationship prior to and after the conveyance.

(3) The presence of language in any of the written documents that expressly negates the intent to enter into a lien instrument or security for an obligation is relevant to the issue of the parties' intent, but does not preclude a determination that the parties intended a lien instrument or security for an obligation.

Sec. 222. Priority: effect of lien instrument priority on foreclosure; effect of lien instrument priority on unrecorded leases.

(a) A valid foreclosure of a lien instrument terminates all interests in the foreclosed real property that are subordinate to the lien instrument being foreclosed and whose subordinate interest holders are properly joined or notified to the extent required under applicable law. Foreclosure of a lien instrument does not terminate interests in the foreclosed real property that are senior to the lien instrument being foreclosed, including statutory liens.

(b) Any purchaser at a valid foreclosure sale of a lien instrument has the same rights and remedies against the tenants of the owner as the owner had, and the tenants have the same rights

and remedies against the purchaser at the valid foreclosure sale as they would have had against the owner on the date the lien instrument was recorded.

(c) Except as provided in this subsection, a valid foreclosure of a lien instrument terminates all non-residential leases in the foreclosed real property that are subordinate to the lien instrument being foreclosed whether or not the tenants are properly joined or notified to the extent required under applicable law, except that tenants under subordinate leases that have been recorded among the land records at least 60 days prior to the sending of the notice of commencement of foreclosure shall be treated as subordinate interest holders and receive notice under of section 502(c)(3). If the required advertisement of the foreclosure sale so discloses, a foreclosure sale shall be made subject to one or more of the tenancies entered into subsequent to the recording of the lien instrument or otherwise subordinated thereto. Any lease so advertised shall be unaffected by the foreclosure sale, except the purchaser shall become the landlord, as of the date of the sale, upon the issuance of the final report approving the foreclosure sale procedures as provided in section 1205(c).

**Sec. 223. Priority: purchase money lien instruments.**

(a) A purchase money lien instrument shall not alter the priority of lien instruments or statutory liens in existence when the real property is conveyed to the grantor granting the purchase money lien instrument. A purchase money lien instrument shall not alter the priority of lien instruments or statutory liens which arise from transactions after and separate from the transaction in which the real property was conveyed to the grantor granting the purchase money lien instrument.

(b) A purchase money lien instrument, recorded among the land records within 30 days of the delivery of the purchase money lien instrument, shall have priority over any other lien instrument, lien, or other claim that attaches to the real property after the grantor's acquisition of title to the real property and prior to recording the purchase money lien instrument from the grantor among land records, but only if the other lien instrument, lien, or other claim is created by or arises against the grantor granting the purchase money lien instrument prior to the grantor's acquisition of title to the real property.

(c) A purchase money lien instrument given to a vendor of real property, in the absence of a contrary intent of the parties to the purchase money lien instrument and subject to the vendor's purchase money lien instrument being recorded among the land records within 30 days of being delivered, shall have priority over a purchase money lien instrument encumbering the same real property given to a person who is not its vendor.

**Sec. 224. Priority: replacement and modification of senior lien instruments; effect on intervening interests.**

(a) If a senior lien instrument is released of record and, as part of the same transaction, is

replaced with a new lien instrument, the new, replacement lien instrument retains the same priority as its predecessor, except:

(1) To the extent that:

(A) Any change in the terms of the lien instrument or the note it secures is materially prejudicial to any subordinate interest holder in the real property and not within the scope of a reservation of right to replace or modify the old lien instrument as provided in subsection (c) of this section;

(B) The maximum principal amount of the note secured by the new lien instrument is increased above the amount previously stated in the old lien instrument;

(C) The proceeds of the loan secured by the lien instrument or note it secures are re-advanced;

(D) A provision is added or increased whereby the noteowner shares in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the real property encumbered by the replacement senior lien instrument, or in any portion of the proceeds or appreciation upon refinancing, sale or appraisal or similar event; or

(2) To the extent that a person who is protected by the operation of section 499 of An Act To establish a code of law for the District of Columbia acquires an interest in the real property at a time that the senior lien instrument is not of record.

(b) If a senior lien instrument or the note it secures is modified by the parties, the senior lien instrument as modified retains priority as against subordinate interests in the real property encumbered by the senior lien instrument, except to the extent that:

(1) The modification is materially prejudicial to the holders of subordinate interests in the real property and is not within the scope of a reservation of right to modify the senior lien instrument as provided in subsection (c) of this section;

(2) The maximum principal amount of the note secured by the modified lien instrument is increased above the amount previously stated;

(3) The proceeds of the loan secured by the modified lien instrument or note it secures are re-advanced; or

(4) A provision is added or increased whereby the noteowner shares in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the real property encumbered by the modified lien instrument, or in any portion of the proceeds or appreciation upon refinancing, sale or appraisal or similar event.

(c) If the owner and mortgagee or owner, trustee and beneficiary reserve the right in a recorded lien instrument to modify or replace the lien instrument or the note it secures, the lien instrument as modified or replaced retains priority over subordinate interests, even if the modification or replacement lien instrument is materially prejudicial to the holders of subordinate interests in the real property, except as provided in this subsection. Notwithstanding the preceding sentence, no modification or replacement of a lien instrument or the note it secures shall retain priority over subordinate interests to the extent the modification or replacement

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increases the maximum principal amount of the note secured by the modified or replaced lien instrument above the amount previously stated in the lien instrument or re-advances the proceeds of the loan secured by the lien instrument or note its secures or adds or increases a provision whereby the noteowner shares in the gross income or the net income, or the gross rent or revenues, or net rents or revenues of the real property encumbered by the modified or replaced senior lien instrument, or in any portion of the proceeds or appreciation upon refinancing, sale or appraisal or similar event, except to the extent the holders of subordinate interests consent in writing to the increased or re-advanced principal amount or added or increased sharing in the income, rent, revenues, proceeds or appreciation in the real property encumbered by the modified or replaced senior lien instrument. In order to receive the benefit of this subsection, a reservation of right in a lien instrument must be prominently stated in all capital letters in the lien instrument.

(d) If a lien instrument contains a reservation of right to modify or replace the lien instrument or the note it secures as described in subsection (c) of this section, the owner of the real property encumbered by the lien instrument may issue a written notice to the noteowner and mortgagee or noteowner, trustee and beneficiary named in the lien instrument terminating the reservation of right to modify or replace the lien instrument. Upon receipt of the written notice by the noteowner and mortgagee or noteowner, trustee and beneficiary named in the lien instrument, the right to modify or replace the lien instrument with retention of priority over subordinate interests under subsection (c) of this section becomes ineffective against persons taking any subsequent interests in the real property encumbered by the lien instrument, and any subsequent modifications or replacement of the lien instrument shall be governed by subsection (b) of this section with any reservation of right. Upon receipt of the written notice, the noteowner, beneficiary or mortgagee and any trustee named in the lien instrument must provide the owner of the real property encumbered by the lien instrument with a certificate in proper form for recordation as a modification of the lien instrument stating that the notice terminating the reservation of right to modify or replace the lien instrument and note it secures with priority over subordinate interests has been received and the reservation of right to modify or replace the lien instrument was terminated on the date of receipt of the written notice.

Sec. 225. Priority: effect of priority on the disposition of foreclosure surplus.

When the foreclosure sale proceeds available for the repayment of the note or other obligations secured by the foreclosing lien instrument exceeds the amount of the note or other obligations, the surplus shall be applied in the manner set forth in sections 1204(b)(4) and (b)(5).

Sec. 226. Priority: lien on after-acquired real property.

(a) A lien instrument may grant a lien on specifically described real property not owned by the grantor or mortgagor at the time of recording the lien instrument. Such grant shall create a lien on the specifically described real property upon the grantor's or mortgagor's acquiring title

to the real property within one year of the date of recording the lien instrument, subject to the rights of purchase money lien instruments in such acquired real property. The description of the real property to be acquired must state the assessment and taxation lot, recorded lot and square numbers and a detailed legal description of the real property to be acquired if it is more complex than recorded lot and square numbers.

(b) For purposes of this section, an “after-acquired property provision” is any language in a lien instrument that purports to be effective against and grant a lien on any other parcel of real property that the grantor or mortgagor subsequently acquires.

(c) An after-acquired property provision is effective among the parties to the lien instrument only with respect to:

(1) Specifically described real property as provided in subsection (a) of this section; and

(2) Interests in real property subsequently acquired by the grantor or mortgagor which are less than whole, recorded lots or parcels and are contiguous to and related in use or purpose to the real property initially encumbered by the lien instrument.

(d) Any third person who acquires an interest in any real property subsequently acquired by the grantor or mortgagor under a lien instrument with an after-acquired property provision described in subsections (b) and (c) of this section, for purposes of determining the priority between the third person’s interest and the lien instrument with an after-acquired property provision, the lien instrument with the after-acquired property provision shall be treated as unrecorded only with respect to the after-acquired parcel of real property until a modification of the lien instrument or notice is recorded among the land records that:

(1) Specifically describes the after-acquired real property in the manner required in subsection (a) of this section;

(2) Refers to the lien instrument containing the after-acquired property provision and states that the trustee or mortgagee now holds a lien on such specifically described real property; and

(3) Is in a form that provides record notice under District of Columbia law.

(e) Any lien created by an after-acquired property provision is junior to any purchase money lien instrument on the grantor’s or mortgagor’s after-acquired real property.

**Sec. 227. Priority: subrogation.**

(a) A person who fully performs an obligation, secured by a lien instrument, of another person shall become by subrogation the owner of the obligation and the lien instrument to the extent necessary to prevent unjust enrichment. The obligation and the lien instrument shall be preserved for the benefit of the performing person and the lien instrument shall retain its priority in the hands of the performing person, notwithstanding whether the performance would otherwise discharge the obligation and mortgage. If the performing person is a subordinate interest holder, the performing person shall be entitled to the protections and benefits of

section 215(d), (e) and (f).

(b) Subrogation shall be deemed appropriate to prevent unjust enrichment if the person seeking subrogation performs the obligation for any of the following reasons:

- (1) The person performs the obligation in order to protect the person's interest;
- (2) The person is under a legal duty to perform the obligation;
- (3) The person performs the obligation on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition;
- (4) The person performs the obligation due to a request from the obligor or the successor of the obligor to perform the obligation, if the person performing the obligation was promised repayment and reasonably expected to receive a lien on the real property with the priority of the lien instrument being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real property; or
- (5) Any other circumstances under which subrogation is deemed necessary to prevent unjust enrichment.

Sec. 228. Priority: subordination.

(a) A lien instrument, by a written declaration of its trustee or mortgagee, may be made subordinate in priority to another interest in the real property encumbered by the lien instrument, whether existing or to be created in the future, if the interest to which the lien instrument is being subordinated is described with reasonable specificity in the written declaration.

(b) A subordination that would materially prejudice the borrower, owner or the person whose interest is advanced in priority is ineffective without the consent of the person whose interest is prejudiced.

Sec. 229. Priority: foreclosure of wrap-around lien instruments.

If a noteowner, beneficiary or mortgagee has a contractual duty to the borrower or owner to perform an obligation secured by another lien instrument of higher priority on the same real property, the noteowner, trustee, beneficiary or mortgagee may seek to recover in foreclosure only the amount by which the balance owing on the note secured by the lien instrument being foreclosed exceeds the balance owing on the senior lien instrument obligation that the noteowner, beneficiary or mortgagee has a duty to pay, together with appropriate fees and costs. Any surplus remaining after application of this sum to the lien instrument being foreclosed shall be distributed under the principles of sections 222 and 225.

Sec. 230. Future advances: general.

(a) For purposes of sections 230, 231 and 232, a lien instrument shall be considered as securing "future advances" if the lien instrument secures performance of an obligation that comes into existence or is enlarged after the lien instrument becomes effective.

(b) As between the parties to a lien instrument, repayment of future advances will be secured by the lien instrument only if the parties have so agreed in writing in the note, lien instrument or a separate agreement.

(c) As against a person acquiring an interest in the real property subsequent to the lien instrument encumbering the real property, repayment of future advances will be secured only if:

(1) A written agreement obligating the owner or borrower to repay future advances as described in subsection (b) of this section exists;

(2) The lien instrument states that repayment of future advances is secured and contains or identifies the written agreement which obligates the owner to do so; and

(3) The lien instrument states a monetary amount to be secured which includes the amount of all future advances except those described in subsection (e) of this section and in section 231.

(d) If the lien instrument states a monetary amount to be secured, the total amount of the principal obligation secured by the lien instrument shall not exceed the stated monetary amount, except as provided in subsection (e) of this section and in section 231. If a lien instrument secures repayment of future advances in a stated principal amount, all advances have the priority of the original lien instrument up to the stated principal amount, regardless of whether the advances were obligatory or discretionary. This subsection does not modify the priority of a mechanic's lien under section 1245 of An Act To establish a code of law for the District of Columbia or the priority of a credit line deed of trust under section 4 of the Real Property Credit Line Deed of Trust Act of 1987.

(e) If the parties to the lien instrument agree in the lien instrument, note or separate written agreement identified in the lien instrument, that the secured obligation includes the repayment of the following items, the lien instrument shall secure their repayment to the extent permitted by District of Columbia law, notwithstanding that when added to the principal obligation they cause the total balance to exceed the stated monetary amount:

(1) Interest, including interest on amounts accruing as interest during previous periods and added to principal, and interest described in section 202(c);

(2) Premiums, fees and other costs of repayment of the note or substitution of the collateral as provided in section 216;

(3) The items listed in section 202(b)(2);

(4) Costs of collection and foreclosure; and

(5) Reasonable attorneys' fees and disbursements.

(f) A lien instrument to secure repayment of future advances is valid whether or not any advances are made at the time the lien instrument becomes effective.

(g) Whether or not the lien instrument secures repayment of future advances, if the parties have agreed that the lien instrument secures payment of those items described in subsection (e) of this section and in section 231, those items shall have the priority of the original lien instrument.

(h) No residential lien instrument shall provide for or secure future advances relating to or paying for improvements to residential real property where the borrower and owner are the same person unless the owner of the residential real property encumbered by the residential lien instrument requests or approves each future advance in writing contemporaneously with each future advance. This subsection prohibits home improvement contractors and noteowners, beneficiaries or mortgagees from disbursing future advances without the written request or approval of the owner of the residential real property. Nothing in this subsection shall affect the priority of those items described in subsection (e) of this section and in section 231.

Sec. 231. Future advances: expenditures for the protection of the real property encumbered by a lien instrument.

(a) Whether or not a lien instrument or the note so provides, a noteowner, trustee, beneficiary or mortgagee may expend funds reasonably necessary for the protection of the real property encumbered by the lien instrument, and may add the sums expended to the principal amount secured by the lien instrument. The purposes for which the expenditures may be made include the following:

(1) To protect the value of the encumbered real property including improvements; or

(2) To protect against the assertion of liens having priority over the lien instrument.

(b) Sums expended under this section have the same priority as the original principal obligation secured by the lien mortgage, except that an expenditure to pay a senior lien may have the priority of the senior lien to the extent provided in sections 215 or 227.

(c) Sums expended under this section may be recovered by way of foreclosure of the lien instrument or, to the extent personal liability exists under District of Columbia law and the terms of the note or lien instrument, by an action on the note or an action for reimbursement of the expenditure itself.

(d) The provisions in this section shall not prohibit or limit the parties to the lien instrument providing for the repayment of other protective expenditures and advancements under the lien instrument so long as they are expressly authorized in the lien instrument or District of Columbia law.

Sec. 232. Future advances: lien instruments securing future advances for improvements to residential real property.

(a) Notwithstanding the provisions of section 1245 of An Act To establish a code of law for the District of Columbia, where a residential lien instrument secures future advances for one or both of improvements to and expansion of an existing single family dwelling, included in the residential real property encumbered by the residential lien instrument, future advances under the residential lien instrument shall have priority over any mechanic's lien filed pursuant to

sections 1237 to 1260, 1263, and 1264 An Act To establish a code of law for the District of Columbia upon the satisfaction of all the following conditions:

- (1) The borrower is a natural person and the owner of the residential real property;
- (2) The borrower occupies the residential real property as the borrower's primary residence;
- (3) The then current assessed value of the residential real property encumbered by the residential lien instrument is less than \$625,000;
- (4) The stated principal amount of the residential lien instrument is less than \$500,000 and the amount of the residential lien instrument allocated to paying for improvements to or expansion of the dwelling is less than \$250,000;
- (5) All advances under the residential lien instrument after the date of filing the notice of mechanic's lien required in section 1238 of An Act To establish a code of law for the District of Columbia shall be used solely to pay for residential improvements to or expansion of residential real property with the same scope and purpose as planned prior to the filing of the notice of mechanic's lien;
- (6) The owner shall deliver written notice to the person filing the mechanic's lien of the owner's election to continue advances under the residential lien instrument with the priority provided by this section and reasonable evidence of its compliance with the conditions in this subsection; and
- (7) The residential improvements to the residential real property with the same scope and purpose as planned prior to the filing of the notice of mechanic's lien must be pursued diligently and continuously and completed within one year of the date of filing the notice of mechanic's lien.

(b) Nothing in this section shall prevent or delay the person filing the mechanic's lien from pursuing enforcement of the mechanic's lien in accordance with sections 1237 to 1260, 1263, and 1264 An Act To establish a code of law for the District of Columbia.

(c) If the owner fails to continuously satisfy any of the conditions in subsection (a) of this section, the priority of the mechanic's lien shall revert back to the same priority it would have had if the provisions of subsection (a) of this section had not been applied to the mechanic's lien priority.

**Sec. 233. Simultaneous foreclosure of lien instrument and ancillary lien instrument.**

A note that is secured by one or more lien instruments or ancillary lien instruments may be enforced by simultaneously foreclosing and enforcing all lien instruments and ancillary lien instruments. If there is personal property encumbered by such ancillary lien instruments that is associated with the real property encumbered by one or more lien instruments, then the noteowner may elect to hold a simultaneous foreclosure sale of such real property and personal property.

Sec. 234. Mortgaging rents.

(a) A lien may be given in a lien instrument on the rents of real property.

(b) A lien may be given on the rents of real property as part of a lien instrument or an ancillary lien instrument.

(c) A lien instrument encumbering the rents of real property shall be effective as against the borrower and owner and, subject to the operation of section 499 of An Act To establish a code of law for the District of Columbia as against third persons, upon execution and delivery.

(d) A lien instrument encumbering the rents of real property may provide that the noteowner, beneficiary, trustee or mortgagee may commence collection of the rents at any time or upon a default by the borrower or owner under the lien instrument upon reasonable notice to the tenants. The noteowner's, beneficiary's, trustee's, or mortgagee's right to actual possession of the rents arises upon:

(1) Satisfaction of any conditions in the lien instrument for the possession of the rents; and

(2) Sending of a written notice, to the owner, borrower, every subordinate interest holder in the real property or its rents, and the tenants of the real property demanding the rents be sent to the noteowner, beneficiary, trustee or mortgagee under the lien instrument.

(e) A lien encumbering the rents of real property or an assignment or transfer of the rents of real property created by a lien instrument shall be perfected as against the borrower and owner under the lien instrument, any subsequent purchaser for value, all subordinate interest holders, and all third persons, upon execution, delivery and recordation among the land records:

(1) Regardless of whether, by its terms or otherwise, the grant of the lien, assignment, or transfer is operative immediately, or upon the occurrence of a specific event, or under any other circumstances; and

(2) Without the noteowner, beneficiary, trustee, or mortgagee having to make any affirmative demand or take any further affirmative action.

**TITLE III. TRUSTEES AND ASSIGNEES FOR FORECLOSURE**

Sec. 301. Qualification of trustee or assignee for foreclosure; trustee or assignee for foreclosure and noteowner, beneficiary, mortgagee and secured party joint representation by same attorney.

(a) The trustee originally named and every substitute trustee subsequently named in a lien instrument shall be a natural person 18 years of age or older who is:

(1) Domiciled in the District of Columbia;

(2) Maintains a principal business office in the District of Columbia; or

(3) Licensed to practice law in the District of Columbia and a member in good standing in the District of Columbia Bar.

(b) The lien instrument shall have printed or typed the domicile address in the District of

Columbia or principal business address in the District of Columbia, or the statement that the trustee or assignee for foreclosure is licensed to practice law in the District of Columbia and a member in good standing in the District of Columbia Bar and the law office address for each trustee or assignee for foreclosure named in the lien instrument or later appointed.

(c) Deeds of trust and mortgages, assignments, modifications, supplements, extensions or amendments of a deed of trust or mortgage, deeds of appointment of substitute trustees in a deed of trust, and assignments to assignees for foreclosure, without the name and District of Columbia address or confirmation of being licensed to practice law in the District of Columbia and in good standing in the District of Columbia Bar and law office address of each trustee or substitute trustee or assignee for foreclosure so typed or printed shall not be recorded among the land records; provided, however, that the absence of confirmation of being licensed to practice law in the District of Columbia and in good standing in the District of Columbia Bar or the absence of a printed or typed address for any trustee or substitute trustee or assignee for foreclosure in a recorded instrument shall not invalidate or adversely affect the enforcement of such instrument.

(d)(1) A trustee or assignee for foreclosure shall be considered independent for the purposes of this act if the trustee or assignee for foreclosure is not an employee, officer, director, private shareholder, principal shareholder, member, partner, trustee, or other owner of an interest in either the note or other obligation being foreclosed or the person who is the noteowner and beneficiary or mortgagee under the lien instrument.

(2) For the purposes of paragraph (1) of this subsection, a “private shareholder” is an owner of a company whose ownership interests are not traded on a recognized public securities exchange, and a “principal shareholder” is any person who owns more than 10% of the ownership interests in any company whose ownership interests are traded on a recognized public securities exchange.

(3) Title company employees, attorneys licensed to practice law in the District of Columbia and in good standing in the District of Columbia Bar, licensed auctioneers, appraisers who are members of recognized national appraisal organizations, and other professionals shall not be disqualified automatically as independent trustees or assignees for foreclosure because they or a professional they work with or their employer is providing services to the noteowner, beneficiary, mortgagee or secured party in connection with the foreclosure, so long as such relationship is either for professional services or that of an independent contractor.

(e) The joint representation of the trustee or assignee for foreclosure and any of the noteowner, beneficiary, mortgagee, and secured party by the same attorney shall not cause the trustee or assignee for foreclosure to lose its independent status. Subject to the requirements of the Code of Professional Responsibility of the District of Columbia Bar, the same attorney may represent the trustee or assignee for foreclosure and the noteowner, beneficiary, mortgagee and secured party.

Sec. 302. Trustee or assignee for foreclosure holds security interest without automatic right of possession; survival of trustee's or assignee's for foreclosure security interest.

(a) A trustee or assignee for foreclosure shall hold only a security interest in the real property encumbered by the lien instrument or by virtue of the security agreement. Except as specifically permitted in this act, a trustee or assignee for foreclosure shall not have a right of possession to the real property encumbered by the lien instrument solely by virtue of the security interest. Nothing in this section shall prevent the passing of an absolute and unqualified estate in fee simple under a deed of real property or personal property made by a trustee or assignee for foreclosure pursuant to the powers conferred by the lien instrument.

(b) Whenever a deed of trust grants a lien to 2 or more trustees, upon the death of any one or more of the trustees the lien and the trust attached to it shall survive to the survivor or survivors or last survivor or the trustees, subject to the noteowner's or named beneficiary's right to substitute, remove, or add trustees.

(c) Whenever a mortgage or security agreement grants a lien to 2 or more assignees for foreclosure, upon the death of any one or more of the assignees for foreclosure the lien and the rights and obligations attached to it shall survive to the survivor or survivors or last survivor of the assignees for foreclosure, subject to the noteowner's or mortgagee's right to substitute, remove, or add assignees for foreclosure.

(d) Whenever a mortgage grants a lien to any mortgagee who is a natural person, upon the death of any one or more of the mortgagees who are natural persons the lien of the mortgage shall pass and survive to the heirs, successors and assigns of the deceased mortgagee, subject to the right of the deceased mortgagee's heirs, successors or assigns to assign the mortgage to a different mortgagee.

Sec. 303. Noteowner's or beneficiary's or mortgagee's right to substitute, add or remove trustees or assignees for foreclosure.

(a)(1) Unless a lien instrument expressly states otherwise, the noteowners owning greater than 50% of all the notes secured by the lien instrument or the beneficiary named in the lien instrument may appoint a substitute or additional trustee or remove an existing trustee at any time and for any reason in the sole discretion of the noteowners or named beneficiary.

(2) The noteowners or named beneficiary in such circumstances shall appoint a substitute or additional trustee or remove an existing trustee by executing, acknowledging and recording among the land records an instrument:

(A) Designating and appointing a substitute or additional trustee;  
(B) Removing an existing trustee; or  
(C) Designating and appointing a substitute or additional trustee and removing an existing trustee.

(3) When an instrument of appointment or removal has been executed, acknowledged, and recorded among the land records, the substitute or additional trustee or

trustees named therein shall be vested with all the powers, rights, authority, duties, and obligations vested in the trustee or trustees originally named in the lien instrument and the removed trustee or trustees named therein shall no longer be vested with any powers, rights, authority, duties, and obligations previously vested in the removed trustee or trustees.

(b) If a lien instrument expressly restricts the right of the noteowners owning greater than 50% of the notes secured by the lien instrument or the named beneficiary to appoint substitute or additional trustees or to remove a trustee, such restrictions shall be binding on the noteowners or named beneficiary; provided, however, that if the last surviving trustee resigns, dies, is incapacitated, is disabled, is permanently absent, refuses to act, or for any other reason ceases to be eligible to continue serving, and the notes secured by the lien instrument have not been paid, then, notwithstanding the restriction in the lien instrument, the noteowners owning greater than 50% of the notes secured by the lien instrument or named beneficiary may appoint a substitute or additional trustee and may remove any trustee who is incompetent, disabled, absent, ineligible, or refuses to act by an instrument described in subsection (a) of this section.

(c)(1) Unless a lien instrument expressly states otherwise, the noteowners owning greater than 50% of all the notes secured by the lien instrument or the mortgagee or secured party named in the lien instrument may appoint a substitute or additional assignee for foreclosure or remove an existing assignee for foreclosure at any time and for any reason in the sole discretion of the noteowners or named beneficiary or named secured party.

(2) The noteowners or named mortgagee or named secured party in such circumstances shall appoint a substitute or additional assignee for foreclosure or remove an existing assignee for foreclosure by executing, acknowledging and recording among the land records an instrument:

(A) Designating and appointing a substitute or additional assignee for foreclosure;

(B) Removing an existing assignee for foreclosure; or

(C) Designating and appointing a substitute or additional assignee for foreclosure and removing an existing assignee for foreclosure.

(3) When an instrument of appointment or removal has been executed, acknowledged, and recorded among the land records, the substitute or additional assignee for foreclosure or assignees for foreclosure named therein shall be vested with all the powers, rights, authority, duties, and obligations vested in the assignee for foreclosure or assignees for foreclosure originally named in the lien instrument and the removed assignee for foreclosure or assignees for foreclosure named therein shall no longer be vested with any powers, rights, authority, duties, and obligations previously vested in the removed assignee for foreclosure or assignees for foreclosure.

(d) If a lien instrument expressly restricts the right of the noteowners owning greater than 50% of the notes secured by the lien instrument or the named mortgagee or secured party to appoint substitute or additional assignee for foreclosure or to remove an assignee for

foreclosure, such restrictions shall be binding on the noteowners, named mortgagee and named security party; provided, however, that if the last surviving assignee for foreclosure resigns, dies, is incapacitated, is disabled, is permanently absent, refuses to act, or for any other reason ceases to be eligible to continue serving, and the notes secured by the lien instrument have not been paid, then, notwithstanding the restriction in the lien instrument, the noteowners owning greater than fifty percent of the notes secured by the lien instrument or the named beneficiary or named secured party may appoint a substitute or additional assignee for foreclosure and may remove any assignee for foreclosure who is incompetent, disabled, absent, ineligible, or refuses to act by an instrument described in subsection (c) of this section.

(e) A borrower, owner, debtor, beneficiary, mortgagee, secured party, or noteowner of a lien instrument may petition the Superior Court to remove or appoint a trustee or assignee for foreclosure in a lien instrument if the borrower, owner, debtor, beneficiary, mortgagee, secured party, or noteowner is unable to use the procedure specified in subsections (a), (b), (c) or (d) of this section. Upon good cause shown, the court shall remove or appoint a trustee or assignee for foreclosure for the lien instrument. The removal or appointment shall be effective upon the recordation of the court's order among the land records.

Sec. 304. Trustee's or assignee's for foreclosure right to resign.

A trustee or assignee for foreclosure may resign at any time and for any reason in the sole discretion of the trustee or assignee for foreclosure, regardless of whether the right to resign is expressly granted in the lien instrument. A trustee or assignee for foreclosure, in order to effect his or her resignation, shall execute, acknowledge, and record among the land records an instrument of resignation and send a copy thereof by regular mail to the beneficiary, mortgagee, secured party, or each noteowner at the such person's last known address. The resignation shall be effective upon recording the instrument of resignation among the land records, whether or not any beneficiary, mortgagee, secured party, or noteowner is sent or receives a copy of the instrument of resignation.

Sec. 305. Trustee or assignee for foreclosure discretionary and ministerial acts.

(a) If there is more than one trustee or substitute trustee or assignee for foreclosure appointed in a lien instrument, the discretionary powers, rights, authority, duties, and obligations granted to the trustees or assignees for foreclosure by the lien instrument may be exercised by any one trustee or assignee for foreclosure acting individually or by 2 or more trustees or assignees for foreclosure acting together if the lien instrument expressly authorizes less than all of the trustees or assignees for foreclosure to act on behalf of all of the trustees or assignees for foreclosure. Where less than all of the trustees or assignees for foreclosure act on behalf of all of the trustees or assignees for foreclosure under such circumstances, the acting trustee or assignee for foreclosure shall be solely responsible for the discretionary actions.

(b) If there is more than one trustee or substitute trustee or assignee for foreclosure

appointed in a lien instrument, the discretionary powers, rights, authority, duties, and obligations granted to the trustees or assignees for foreclosure by the lien instrument may be exercised by any one trustee or assignee for foreclosure acting individually or by 2 or more trustees or assignees for foreclosure acting together pursuant to a prior written agreement among all of the trustees or assignees for foreclosure if the lien instrument does not expressly prohibit the delegation of authority and does not expressly require that some number or all trustees or assignees for foreclosure act jointly on behalf of all trustees or assignees for foreclosure. Where less than all of the trustees or assignees for foreclosure act on behalf of all of the trustees or assignees for foreclosure under such circumstances, all of the trustees or assignees for foreclosure shall be jointly and severally responsible for the discretionary actions of the acting trustee or assignee for foreclosure.

(c) A provision in a lien instrument that expressly provides that all discretionary powers, rights, authority, duties, and obligations granted to more than one trustee or assignee for foreclosure by the lien instrument must be exercised by all trustees or assignees for foreclosure or by 2 or more of the trustees or assignees for foreclosure acting together shall be binding on all trustees or assignees for foreclosure.

(d) Any one trustee or assignee for foreclosure may perform a ministerial duty on behalf of all of the trustees or assignees for foreclosure, notwithstanding whether the lien instrument provides for ministerial duties of the trustees or assignees for foreclosure to be performed by less than all of trustees or assignees for foreclosure. Ministerial duties include sending written notices, confirming receipt of funds or instruments, forwarding instruments received, and filing fully executed instruments with the Recorder of Deeds or a court. Where less than all of the trustees or assignees for foreclosure perform a ministerial duty on behalf of all of the trustees or assignees for foreclosure, the acting trustee or assignee for foreclosure shall be solely responsible for the ministerial actions.

Sec. 306. Petition for certificate of satisfaction after death or unavailability or refusal to act of trustee or assignee for foreclosure; procedure; summary determination.

(a) If a sole trustee or sole assignee for foreclosure or the last survivor of more than one trustee or assignee for foreclosure of a lien instrument dies, is unavailable, or refuses to act, and the notes secured by the lien instrument have been paid, the person paying the notes or the owner of the real property secured by the lien instrument may file a petition, in the court having probate jurisdiction, requesting the appointment of a trustee or assignee for foreclosure in the place of the deceased, unavailable, or refusing trustee or assignee for foreclosure to execute and deliver a certificate of satisfaction of the lien instrument as provided in section 218(c) and (d).

The petition shall set forth, under oath, facts and statements attesting to:

- (1) The execution of the lien instrument and recordation among the land records;
- (2) The death, unavailability, or refusal to act of the trustee or assignee for foreclosure;

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- (3) The full payment of the notes secured by the lien instrument; and
- (4) Any other facts necessary to entitle the petitioner to the relief requested.

(b) Unless the noteowner secured by the lien instrument voluntarily appears and admits the allegations of the petition, the court may order the noteowner secured by the lien instrument to show cause, under oath, on or before the 10th day, excluding Sundays and legal holidays, after the service of the order, why the petition should not be granted. If the noteowner does not show cause why the petition should not be granted, the court shall take evidence to confirm that the notes secured by the lien instrument have been fully paid and the lien instrument should be released. If the court determines that the notes have been fully paid and the lien instrument should be released, the court may appoint a trustee or assignee for foreclosure in the place of the deceased, unavailable, or refusing trustee or assignee for foreclosure for the purpose of executing a certificate of satisfaction.

(c) Nothing in this section shall prevent or delay the appointment of a replacement or additional trustee or assignee for foreclosure pursuant to section 303 and the execution of a certificate of satisfaction or deed of release by such new trustee or assignee for foreclosure.

Sec. 307. Standard of trustee's or assignee's for foreclosure conduct; indemnification of Trustee and assignee for foreclosure; Trustee or assignee for foreclosure bond requirements.

(a) A trustee or assignee for foreclosure is not a fiduciary of any noteowner, borrower, owner, or other person liable for the note secured by the lien instrument. The trustee or assignee for foreclosure has the duty to use diligence, ensure the proper conduct of any foreclosure sale, and treat all parties to the lien instrument fairly and equitably in good faith. A trustee or assignee for foreclosure may do more than is required in this act but shall have no obligation or duty to do so or to expend the trustee's own funds. A trustee or assignee for foreclosure shall be protected in acting upon any notice, request, consent, demand, statement, note, or other paper or other document believed by the trustee or assignee for foreclosure to be genuine.

(b) Whether or not the lien instrument contains an indemnification of the trustee or assignee for foreclosure, every trustee and assignee for foreclosure shall be indemnified jointly and severally by the owners of the encumbered real property and the noteowners for all acts taken in good faith pursuant to the lien instrument which are not intentionally wrongful, grossly negligent, or a knowing violation of law. The owners of the encumbered real property and the noteowners, under the indemnification in this subsection, shall defend the trustee or assignee for foreclosure (with reasonably acceptable legal counsel) and hold harmless the trustee or assignee for foreclosure from and against all losses, costs, and expenses, including reasonable attorneys' fees and disbursements, incurred by reason of any claim under the lien instrument or in any action, suit, proceeding, hearing, motion, or application before any court or administrative body in and to which the trustee or assignee for foreclosure may be or become a party by reason of the lien instrument. The indemnification shall include the trustee's or assignee's for foreclosure being a party to any condemnation, bankruptcy, probate, or administrative proceedings, as well

as any other proceeding where proof of claim is required to be filed by law or in which it becomes necessary to defend or uphold the terms of the lien instrument.

(c) Except as ordered by a court of competent jurisdiction, no bond shall be required of a trustee or assignee for foreclosure in order to conduct a foreclosure.

Sec. 308. Trustee or assignee for foreclosure determines foreclosure process consistent with noteowner's, beneficiary's, mortgagee's, or secured party's written instructions.

(a) The trustee or assignee for foreclosure shall determine the foreclosure process for a lien instrument in accordance with:

- (1) All requirements of law and governmental regulation;
- (2) The express terms of the lien instrument to the extent they comply with the requirements of law and governmental regulation; and
- (3) The written instructions received from the noteowner, beneficiary, mortgagee, or secured party.

(b) In making the determinations under subsection (a) of this section, the trustee or assignee for foreclosure may rely upon and follow the advice of an attorney jointly representing the trustee or assignee for foreclosure and any of the noteowner, beneficiary, mortgagee, and secured party. If the trustee or assignee for foreclosure cannot conduct the foreclosure sale in accordance with subsection (a) of this section, he or she shall advise the noteowner, beneficiary, mortgagee or secured party in writing and ask for revised written instructions. If the trustee or assignee for foreclosure does not receive reasonably satisfactory revised written instructions which enable the foreclosure sale to be conducted in accordance with subsection (a) of this section, then the trustee or assignee for foreclosure shall resign by recording an instrument of resignation among the land records and sending a copy to the noteowner, beneficiary, mortgagee, or secured party in accordance with section 304.

Sec. 309. Trustee or assignee for foreclosure commission and compensation for foreclosure.

(a) The Mayor shall promulgate a schedule of commissions and compensation for trustees and assignees for foreclosure to be used for determining the commissions and compensation charged to the borrower, owner and subordinate interest holder in the enforcement and foreclosure of lien instruments. The schedule of commissions and compensation shall separately provide for residential lien instruments and any other categories or combinations of other lien instruments. The Mayor may revise the schedule of commissions and compensation at any time where a revision is necessary or reasonable, in the Mayor's discretion. The schedule of commissions and compensation may be based on any combination of:

- (1) Fixed or limited dollar amounts;
- (2) Percentages of the amount owed on a note;
- (3) Percentages of a purchase price at a foreclosure sale auction;

(4) Reasonable hourly rates based on time actually spent on the enforcement of the lien instrument, the note, any ancillary lien instrument, the foreclosure sale, any litigation or other proceeding relating to the lien instrument, the note, any ancillary lien instrument, or the foreclosure sale;

(5) Authorizing the commission and compensation provisions in any lien instrument, other than a residential lien instrument, to govern and control the commissions and compensation for the trustee or assignee for foreclosure under the lien instrument; and

(6) Any other basis the Mayor determines is reasonable.

(b) The schedule of commissions shall set commissions or rates of commission for the following circumstances plus any other circumstances the Mayor decides to address in the schedule of commissions:

(1) An uncontested foreclosure of a residential lien instrument with no attempt by the borrower, owner or any subordinate interest holder to reinstate the note or redeem the real property, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The noteowner or an affiliate of the noteowner purchases the real property at the foreclosure sale auction; or

(B) A third person, unaffiliated with the noteowner, beneficiary, mortgagee and secured party, purchases the real property at the foreclosure sale auction;

(2) Subject to the limitation in subsection (c) of this section, the commencement of foreclosure of a residential lien instrument with no litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(3) The commencement of foreclosure of a residential lien instrument with litigation or court proceedings where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(4) A completed foreclosure of a residential lien instrument without litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where there are material reinstatement or redemption negotiations with the borrower,

owner or a subordinate interest holder; and

(5) A foreclosure of a residential lien instrument with litigation or court proceedings concerning the foreclosure, the owner's or borrower's bankruptcy, the residential real property encumbered by the residential lien instrument, or any other matter related to the foreclosure.

(c) Notwithstanding the provisions of subsection (b) of this section, the trustee or assignee for foreclosure shall not charge commissions and compensation for his or her services in an amount greater than a reasonable hourly rate for the time actually spent by the trustee or assignee for foreclosure on the enforcement and foreclosure of the residential lien instrument if there has been no litigation or court proceedings, no title problem with the real property, no ancillary proceeding of any kind, and the trustee or assignee for foreclosure does not complete the foreclosure sale because:

(1) The owner redeems the residential real property;  
(2) The owner reinstates the note and residential lien instrument with or without modification; or

(3) The noteowner and owner reinstate the note and lien residential instrument with or without modification.

(d) The commissions and compensation charged to the borrower, owner and subordinate interest holder for a trustee or an assignee for foreclosure for enforcing and completing a foreclosure sale under a residential lien instrument shall be the lower of the amounts specified in the residential lien instrument or the amounts provided in the schedule of commissions and compensation for the residential lien instrument and the circumstances that occur.

(e) The Mayor shall provide the schedule of commissions and compensation to any person upon written request through generally available electronic means or regular mail.

(f) No trustee or assignee for foreclosure may charge the borrower, owner and subordinate interest holder or receive from them more than the amounts provided in the schedule of commissions and compensation promulgated by the Mayor for conducting enforcement or foreclosure actions under a lien instrument. This includes any rebates, supplemental payments, gifts, free services or other payments or material benefits received from any person involved in the foreclosure sale with respect to the foreclosure sale. The foregoing does not include additional commission and compensation to the trustee or assignee for foreclosure voluntarily made by the noteowner, mortgagee, beneficiary, or secured party where the additional payment is not charged directly or indirectly to the borrower, owner or subordinate interest holder.

(g) Subject to the limitations in the schedule of commissions and compensation and only by mutual agreement:

(1) The noteowner or beneficiary or mortgagee or secured party, the owner, and the trustee or assignee for foreclosure may amend the lien instrument at any time to modify the commission and compensation of a trustee or assignee for foreclosure for enforcement or foreclosure action; and

(2) The noteowner, beneficiary, mortgagee, secured party, borrower, or owner may enter into a separate agreement with the trustee or assignee for foreclosure reducing the commission and compensation below the amount specified in the lien instrument.

**TITLE IV. SENDING OF NOTICES; DEFAULT; LATE FEES; NOTICE OF DEFAULT; NOTICE OF ACCELERATION; RIGHT TO CURE AND REINSTATE; RIGHT TO REDEEM.**

Sec. 401. Sending of notices.

(a) Whenever one or more parties to a lien instrument, an ancillary lien instrument, the note or other obligation secured by a lien instrument, or a separate written agreement related to the lien instrument is required to send written notice to another person, the manner of sending the written notice shall comply with this section.

(b) Where the lien instrument, ancillary lien instrument, note or other obligation secured by the lien instrument, or separate written agreement related to the lien instrument, as any of them may be modified or updated, specifies the manner of sending the notice, the person sending the notice shall send the notice in a manner and to the addresses which comply with the lien instrument, ancillary lien instrument, note or other obligation secured by the lien instrument, or separate written agreement related to the lien instrument.

(c) In addition to the requirements in subsection (b) of this section, every notice sent under section 219(c), section 224(d), section 232(a)(6), section 234(d)(2), section 402(a), section 404(a), section 502(c)(2) and (c)(3), section 504(a), section 602(g)(1) and (g)(2), section 701(b), section 702(a), section 704(a)(1), section 705, section 706, section 1105(b) and (c), section 1109(b)(1), and section 1205(f) shall be sent in a manner which complies with the following requirements:

(1) Each notice shall be sent both by regular U.S. mail, first-class postage prepaid, and by certified or registered U.S. mail, return receipt requested and first-class postage prepaid and with correct zip codes.

(2) For any notice to the borrower, owner, trustee, assignee for foreclosure, noteowner, beneficiary, mortgagee and secured party, except where the sending party receives actual notice in accordance with this section of a corrected or more recent notice address, the notice address shall be as of a date which is not less than 60 days before the date the notice of commencement of foreclosure is sent pursuant to section 502, the last known address, if any, provided in or pursuant to:

(A) The lien instrument, ancillary lien instrument, note or other obligation secured by the lien instrument, or separate written agreement related to the lien instrument, as any of them may be modified or updated, for any person who is not making regular payments on the note or other obligation at least every 3 months;

(B) The billing address for any person paying a note or other obligation not less frequently than every 3 months;

(C) The address maintained by the Recorder of Deeds pursuant to section 499d of An Act To establish a code of law for the District of Columbia; and

(3) For notice to any subordinate interest holder, the notice address shall be the address for the subordinate interest holder maintained by the Recorder of Deeds pursuant to section 499d of An Act To establish a code of law for the District of Columbia as of a date which is not less than 60 days before the date the notice of commencement of foreclosure is sent pursuant to section 502, except where the sending party receives actual notice in accordance with this section of a corrected or more recent notice address for a subordinate interest holder.

(d) Any notice sent in a manner that complies with subsection (c) of this section and which is sent to a correct address within the United States of America shall be deemed received by the addressee 5 business days after the sending of the notice. If the person sending the notice pursuant to subsection (c) of this section does not have a specific address as provided in subsection (c)(2) of this section or knows that the address the person has is not correct, then the notice sent by the person shall not be deemed received after 5 business days pursuant to this subsection. Any written notice actually received by the intended recipient shall be deemed to have been sent in conformity with this section and received on the date actually received.

(e) Any person obligated to send a notice pursuant to this act or the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument, may cause such notice to be sent on such person's behalf by the person's attorney, agent, loan servicer or other designated representative. So long as the notice is sent in a manner which complies with this section, the notice shall be deemed to have been sent by the person obligated to send the notice.

(f) Nothing in this section shall prevent a person from sending a notice to additional persons, addresses or by duplicate means.

Sec. 402. Notice of default required; no effect on late fees.

(a) A noteowner or obligee shall send a written notice of default to all persons liable on a note or other obligation secured by and the owner of the real property encumbered by a lien instrument, except for those persons described in section 502(g), when the noteowner or obligee declares a default under the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument. Any grace period to cure the default specified in the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument shall be provided. The notice of default shall specify:

- (1) The default in reasonable detail;
- (2) The action required to cure the default;
- (3) A date by which the default must be cured;
- (4) Any grace period required by section 403 or provided in the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement

related to the lien instrument, or voluntarily provided by the noteowners;

(5) That failure to cure the default on or before the date specified in the notice (may) (shall) result in acceleration of the maturity of the note or other obligation secured by the lien instrument and the foreclosure sale of the real property;

(6) Whether the maturity of the note or other obligation will be accelerated automatically if the default is not cured by the specified date;

(7) Whether the addressee of the notice will have any right to reinstate the maturity of the note or other obligation after its acceleration; and

(8) The addressee's right to bring a court action to assert the non-existence of a default or any other defense of the addressee, including the failure to send proper notices, to the acceleration and foreclosure sale.

(b) Late fees, up to the amounts permitted by law, may be imposed on delinquent payments if the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument specifically provides for late fees. Unless notice is required in the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument, late fees may be imposed without notice. A default for the failure to pay late fees under the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument shall be subject to the notice requirement in subsection (a) of this section.

(c) The failure to send notice under subsection (a) of this section to any person who is personally liable on the note or other obligation or the owner of the real property secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument shall not invalidate a notice sent to another personally liable person or owner or the acceleration of the maturity of the indebtedness evidenced by the note or other obligation with respect to the other person or owner who was properly sent a notice.

(d) If a person who is personally liable on the note or other obligation or the owner of the real property secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument is not sent a notice required by subsection (a) of this section, the non-receiving person's or owner's rights and obligations shall not be adversely affected by the failure to send the notice required by subsection (a) of this section. However, no enforcement action may be commenced against the personally liable person or owner until after the person or owner receives the notice required under subsection (a) of this section and is given an opportunity to cure and reinstate the maturity date and other terms of the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument.

(e) When a person who is personally liable on a the note or other obligation or the owner of real property secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument is sent a notice required by subsection (a) of this section

after default notices to other personally liable persons or owners have been sent, the person's or owner's cure and reinstatement rights shall not require the person or owner actually curing and reinstating the maturity date and other terms of the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument to pay enforcement costs, including attorneys' fees, default interest, or late payment fees, accrued or incurred during the period between the expiration of the grace period in the first notice to a personally liable person or owner and the date the personally liable person or owner who received a later notice cures the default and reinstates the maturity and other terms of the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument.

(f) If the default specified in the notice required in subsection (a) of this section is not cured on or before the date specified in the notice, the noteowner, beneficiary, trustee, mortgagee, or secured party, at its option, may commence enforcement as provided in the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument and as permitted by applicable law.

Sec. 403. Minimum grace period for borrower and owner under residential lien instrument.

(a)(1) Except as provided in subsection (b) of this section, the minimum grace period for curing any payment or non-payment default under a residential lien instrument or the note or other obligation the residential lien instrument secures shall not be less than the greater of (A) 30 calendar days; or (B) the applicable grace period, if any, for the default provided in the uniform residential lien instrument for the District of Columbia promulgated by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(2) The borrower or owner and noteowner or beneficiary or mortgagee may contract for longer grace periods or the noteowner may unilaterally provide a longer grace period. Grace periods in non-residential lien instruments shall be determined by the parties to the non-residential lien instrument, subject to the requirements of federal and District of Columbia law.

(b) Subsection (a) of this section shall not apply to the following defaults by a borrower or owner:

(1) The failure to maintain fire and extended coverage insurance or other property insurance covering other perils on the residential real property as required by the residential lien instrument;

(2) The intentional, voluntary transfer of ownership of the residential real property in violation of an express agreement in the residential lien instrument to not transfer ownership of the residential real property without the noteowner's, beneficiary's, or mortgagee's prior consent; or

(3) The owner is committing waste as defined in section 509.

Sec. 404. Notice of acceleration required; right of reinstatement until notice of acceleration sent or received; notice of commencement of foreclosure satisfies notice of acceleration.

(a) No maturity date of a note or other obligation secured by a lien instrument may be accelerated on account of an uncured default until a notice of acceleration has been sent to each person the noteowner or obligee of the other obligation intends to hold personally liable for payment or performance and the owner of the real property encumbered by the lien instrument. The notice of acceleration shall not be sent to a person or owner before a notice of default required by section 402(a) has been sent to the same person. A notice of default required by section 402(a) may contain an advance notice of acceleration for an uncured default if the person or owner receiving the notice of default is provided grace periods of not less than the time period specified in section 403(a)(1) for residential lien instruments or ten days for all other lien instruments within which to cure monetary defaults.

(b) Until the maturity date of a note or other obligation is accelerated by a notice of acceleration for an uncured default, the default may be cured and the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument reinstated to good standing.

(c) If no notice of acceleration is sent and the default under a note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument has not been cured by the time the notice of commencement of foreclosure under section 502 is sent, the notice of commencement of foreclosure shall automatically satisfy the requirement of a notice of acceleration under subsection (a) of this section, unless it specifically states it is not a notice of acceleration, with respect to all persons except the owner of the real property encumbered by the lien instrument being foreclosed and those personally liable persons who did not receive a notice of default as required in section 402(a).

(d) The failure to send notice of acceleration under subsection (a) of this section to the owner of the real property encumbered by the lien instrument or any person who is personally liable on a note or other obligation secured by a lien instrument shall not invalidate a notice of acceleration sent to another owner or personally liable person or the acceleration of the maturity of the note or other obligation with respect to the owner or person who was properly sent a notice of acceleration. To the extent an owner or person personally liable on the note or other obligation is not sent a notice of acceleration, the owner's or person's rights and obligations shall not be affected by the failure; however, no enforcement action under the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument may be commenced against the owner or personally liable person until after the owner or person is sent the notice of acceleration required in subsection (a) of this section after being sent the notice of default required in section 402(a).

Sec. 405. Borrower's and owner's right to cure default and reinstate obligation secured by residential lien instrument prior to foreclosure sale auction 3 times in any 12 month period.

(a)(1) Notwithstanding any contrary provisions in the note or residential lien instrument, a borrower or owner of a residential real property encumbered by a residential lien instrument shall have the right to cure all defaults under, and reinstate the maturity date and other terms of, the note and residential lien instrument, except for a breach of any "due on sale" restriction, at any time until the commencement of the foreclosure sale auction described in section 1101 by tendering the amount or performance specified in subsection (b) of this section. Unless expressly permitted by the noteowner, this right may not be exercised by:

(A) Any owner who acquired the residential real property in violation of a "due on sale" restriction in the note or lien instrument; or

(B) Any or all borrowers and owners more than 3 times in any 12 month period.

(2) Upon the permitted exercise and performance of this right, any foreclosure sale under the note and residential lien instrument shall be cancelled.

(b) To cure a default pursuant to subsection (a) of this section, a borrower or owner shall:

(1) Pay or tender to the trustee or assignee for foreclosure or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee in the form of cash, cashier's check, or certified check all sums required to bring the note and other obligations under the residential lien instrument current, including late payment penalties and sums advanced by the trustee, assignee for foreclosure, noteowner, beneficiary, and mortgagee for unpaid real estate taxes and property insurance premiums where the owner did not maintain the property insurance required in the residential lien instrument, but excluding any amounts due by operation of any acceleration of the maturity date of the note secured by the residential lien instrument;

(2) Perform any other reasonable obligation which the borrower or owner would have been bound to perform in the absence of the default or in the absence of the acceleration of the maturity date of the note secured by the residential lien instrument; and

(3) Pay or tender to the trustee or assignee for foreclosure or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee in the form of cash, cashier's check, or certified check all reasonable and necessary expenses required for the foreclosure and incurred by the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee up to the date of the borrower's or owner's payment or tender under subsection (a) of this section. To the extent these reasonable and necessary expenses are required to be paid in the residential lien instrument and approved by the noteowner, the expenses may include, but are not limited to, title search costs, notice of commencement of foreclosure recording costs, advertising costs, trustee's fee as provided in section 309, an auctioneer's cancellation fee as provided in section 1401, and attorneys' fee and expenses as provided in section 1402.

(c) Upon the written request of the borrower or owner, the trustee or assignee for

foreclosure or attorney for the trustee or assignee for foreclosure shall provide the borrower or owner, within 3 business days of the receipt of the request, a current itemization and verification of the amounts and performance necessary to cure the default and reinstate the note and residential lien instrument under this section as of a date 14 business days after the sending of the current itemization, including unpaid installments of principal, interest and escrow payments, late payment penalties, amounts actually advanced for unpaid real estate taxes, amounts actually advanced for property insurance premiums, title search expenses, notice of commencement of foreclosure recording expenses, foreclosure advertising expenses, an auctioneer's cancellation fee pursuant to section 1401, attorneys' fees and expenses pursuant to section 1402, a daily amount for principal, interest and escrow payments and specified amounts for additional enforcement expenses anticipated during the 14 days following the issuance of the current itemization, and any other amounts reasonably required to reinstate the note and residential lien instrument to good standing. The amounts and performance included in the itemization and verification either shall be approved by the noteholder or shall be deemed approved by the noteholder as being correct.

(d) The curing of a default pursuant to this section under a note and residential lien instrument shall reinstate the borrower, owner, note and residential lien instrument to the same condition as if the default or acceleration had not occurred. This subsection shall not be construed to impose upon the noteholder a requirement to request, or assist in, the expungement or alteration of a default accurately reported to a credit reporting organization.

Sec. 406. Certain subordinate interest holder's right to cure and reinstate note secured by residential lien instrument prior to foreclosure sale auction once in any 12 month period.

(a) Notwithstanding any contrary provisions in the note or residential lien instrument, a subordinate interest holder in a residential property encumbered by a residential lien instrument, whose interest was created by a residential lien instrument recorded at least 60 days before the notice of commencement of foreclosure sale is recorded among the land records, as verified by the trustee's or assignee's for foreclosure's title report or a title report provided by such subordinate interest holder, shall have the right to cure all defaults under, and reinstate the maturity date and other terms of, the note and residential lien instrument, except for a breach of any "due on sale" restriction, at any time until the commencement of the foreclosure sale auction described in section 1101 by tendering the amount or performance specified in subsection (b) of this section. This right may not be exercised by any or all subordinate interest holders, whose interests in the residential real property were created by residential lien instruments recorded at least 60 days before the notice of commencement of foreclosure sale is recorded among the land records, more often than one time in any 12 month period. Upon the permitted exercise and performance of this right, any foreclosure sale under the note and residential lien instrument shall be cancelled.

(b) To cure a default under subsection (a) of this section, a subordinate interest holder

described in subsection (a) of this section shall:

(1) Pay or tender to the trustee or assignee for foreclosure or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee in the form of cash, cashier's check, or certified check all sums required to bring the note and other obligations under the residential lien instrument current, including late payment penalties and sums advanced by the trustee, assignee for foreclosure, noteowner, beneficiary, and mortgagee for unpaid real estate taxes and property insurance premiums where the owner did not maintain the property insurance required in the residential lien instrument, but excluding any amounts due by operation of any acceleration of the maturity date of the note secured by the residential lien instrument;

(2) Perform any other reasonable obligation which the borrower or owner would have been bound to perform in the absence of the default or in the absence of the acceleration of the maturity date of the note secured by the residential lien instrument; and

(3) Pay or tender to the trustee or assignee for foreclosure or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee in the form of cash, cashier's check, or certified check all reasonable and necessary expenses required for the foreclosure and incurred by the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee up to the date of the subordinate interest holder's payment or tender under subsection (a) of this section. To the extent these reasonable and necessary expenses are required to be paid in the residential lien instrument and approved by the noteowner, the expenses may include, but are not limited to, title search costs, notice of commencement of foreclosure recording costs, advertising costs, trustee's fee as provided in section 309, an auctioneer's cancellation fee as provided in section 1401, and attorney's fees and expenses as provided in section 1402.

(c) Upon the written request of a subordinate interest holder whose interest was created by a residential lien instrument recorded at least 60 days before the notice of commencement of foreclosure sale is recorded among the land records, as verified by the trustee's or assignee's for foreclosure title report or a title report provided by such subordinate interest holder, the trustee or assignee for foreclosure or attorney for the trustee or assignee for foreclosure shall provide the subordinate interest holder within 3 business days of the receipt of the request, a current itemization and verification of the amounts and performance necessary to cure the default and reinstate the note and residential lien instrument under this section as of a date 14 business days after the sending of the current itemization, including unpaid installments of principal, interest and escrow payments, late payment penalties, amounts actually advanced for unpaid real estate taxes, amounts actually advanced for property insurance premiums, title search expenses, notice of commencement of foreclosure recording expenses, foreclosure advertising expenses, an auctioneer's cancellation fee pursuant to section 1401, attorneys' fees and expenses pursuant to section 1402, a daily amount for principal, interest and escrow payments and specified amounts for additional enforcement expenses anticipated during the 14 days following the issuance of the current itemization, and any other amounts reasonably required to reinstate the note and

residential lien instrument to good standing. The amounts and performance included in the itemization and verification either shall be approved by the noteowner or shall be deemed approved by the noteowner as being correct.

(d) The curing of a default pursuant to this section under a note and residential lien instrument shall reinstate the note and residential lien instrument to the same condition as if the default or acceleration had not occurred. This subsection shall not be construed to impose upon the noteowner a requirement to request, or assist in, the expungement or alteration of a default accurately reported to a credit reporting organization. The subordinate interest holder described in subsection (a) of this section shall have the right to elect at the time of curing a default pursuant to this section one of the following choices:

(1) A claim against the residential real property encumbered by the residential lien instrument and the owner of the real property, if the owner is personally liable on the note secured by the residential lien instrument, in the amount paid under this section to cure the default, with a lien priority immediately junior to the lien of the residential lien instrument the payment cured and reinstated. The claim shall not share or be part of the indebtedness secured by the reinstated residential lien instrument; or

(2) A claim under the subordinate interest holder's residential lien instrument wherein the subordinate interest holder is the noteowner, beneficiary or mortgagee, with the same lien priority as the subordinate residential lien instrument.

**Sec. 407. Right to redeem after acceleration.**

Except as provided in sections 405 and 406 and this section, after acceleration of the maturity date of a note or other obligation secured by a lien instrument has occurred, a borrower, owner, or subordinate interest holder may prevent foreclosure only by paying or tendering to the trustee, assignee for foreclosure, noteowner, beneficiary, mortgagee or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee all amounts then due on the accelerated note or other obligation secured by the lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument. A borrower, owner, or subordinate interest holder described in section 406(a), who did not acquire the residential real property in violation of a "due on sale" restriction in the note or lien instrument, may defeat acceleration and reinstate the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to the lien instrument, by paying or tendering to the trustee, assignee for foreclosure, noteowner, beneficiary, mortgagee or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee the amount and performance described in sections 405(b) and 406(b), as applicable, if:

(1) The action of the borrower, owner, or subordinate interest holder is authorized by law or governmental regulation or by the terms of the note or other obligation secured by a lien instrument, ancillary lien instrument, or separate written agreement related to

the lien instrument;

- (2) The noteowner or obligee has waived its right to accelerate; or
- (3) The noteowner, trustee, assignee for foreclosure, beneficiary, mortgagee, or the attorney for the trustee, assignee for foreclosure, noteowner, beneficiary, or mortgagee has engaged in fraud, bad faith, or other conduct making acceleration unconscionable.

**TITLE V. COMMENCEMENT OF FORECLOSURE; REQUIRED NOTICES; COMPLIANCE WITH LAWS**

Sec. 501. Accrual of right to foreclose; preconditions of recorded lien instrument and uncured default; instruction to trustee or assignee for foreclosure to commence.

(a) The right to foreclose a lien instrument accrues to the beneficiary or mortgagee when there is an uncured default beyond any grace period to cure the default. Unless the lien instrument expressly limits the right to foreclose, the lien instrument shall be deemed to include the right to foreclose by power of sale foreclosure.

(b) Foreclosure may not be commenced until:

- (1) The lien instrument has been recorded among the land records and has created a valid lien on the real property; and
- (2) An uncured default beyond any grace period to cure the default has occurred under the lien instrument.

(c) No trustee or assignee for foreclosure under a lien instrument shall commence foreclosure until the noteowner, obligee, beneficiary, mortgagee, or secured party has provided the trustee or assignee for foreclosure with written instructions to foreclose the lien instrument and specifying the foreclosure process to be used as required under section 308(a)(3). If there is more than one noteowner, obligee, beneficiary, mortgagee, or secured party, the holders of a majority of the ownership interests in the note or other obligation must join in the written instructions to the extent required in section 211.

Sec. 502. Notice of commencement of foreclosure.

(a) The notice of commencement of foreclosure shall be prepared on a form promulgated by the Mayor and in accordance with any rules promulgated by the Mayor. The Mayor shall provide the notice of commencement of foreclosure form to any person upon request through generally available electronic means or regular mail.

(b) The notice of commencement of foreclosure shall include:

- (1) The street address of the real property being foreclosed;
- (2) The legal description of the real property being foreclosed as stated in the lien instrument, including assessment and taxation lot and square numbers and whether the real property is residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less;
- (3) The last known name of the owner;

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(4) The nature of the uncured default and the amount due under the lien instrument as of the date of the last overdue payment, including accrued interest;

(5) For a residential lien instrument or as required by any lien instrument, the right of the borrower or owner to cure the default and reinstate the maturity date and other terms of the note or other obligation and lien instrument as provided in section 405 or the lien instrument, with an explanation of what the borrower or owner needs to do to cure the default and reinstate the maturity date and other terms of the note or other obligation and lien instrument;

(6) For a residential lien instrument encumbering residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million or less, the name of the person to whom a check should be made payable and an address in the District of Columbia where the check can be delivered in order to reinstate or redeem;

(7) Notice of the borrower's or owner's right to bring a court action to assert the non-existence of a default or any other defense of the borrower or owner to the acceleration and foreclosure;

(8) The date, time and place of the foreclosure sale auction;

(9) The name, type of entity, domicile and notice address for the noteholder or beneficiary, mortgagee or secured party secured by the lien instrument;

(10) The name, address, and contact information for the trustee or assignee for foreclosure, and the noteholder, beneficiary, mortgagee, or secured party, as applicable, and the attorney representing each of them in the foreclosure;

(11) Whether the noteholder or obligee has the original note or other obligation in its possession, or has provided a lost note affidavit to the trustee or assignee for foreclosure;

(12) The identity, name, address, and telephone number of the person maintaining the copies required by section 513;

(13) Whether the note and lien instrument qualify as a home loan;

(14) Notice of the borrower's or owner's right, if any, to request a judicial sale foreclosure and the procedures by which such a sale may be requested;

(15) If the note and lien instrument qualify as a home loan, the monthly amount necessary to satisfy the required conditions during challenge as defined section 703(a) and the person to whom such monthly amount must be paid; and

(16) Any other information the Mayor determines to include.

(c) Subject to the effect of subsections (f) and (g) of this section, no trustee, assignee for foreclosure, mortgagee, secured party, or obligee shall conduct a foreclosure sale under a power of sale contained in any lien instrument unless the trustee, assignee for foreclosure, mortgagee, secured party, or obligee of the other obligation secured thereby has complied with paragraphs (1), (2) and (4) of this subsection and does not know of any failure to comply with paragraph (3) of this subsection:

(1) Records the notice of commencement of foreclosure among the land records

at least:

(A) Forty-five days in advance of the date of the foreclosure sale auction of residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less; or

(B) Thirty days in advance of the date of the foreclosure sale auction of any real property other than residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less;

(2) Mails a copy of the notice of commencement of foreclosure in the manner required in section 401 with the information required in subsection (d) of this section to every borrower whom the noteowner or obligee intends to hold personally liable for the note or other obligation and to the owner of the real property encumbered by the lien instrument, except an owner defined in subsection (g) of this section at least:

(A) Forty-five days in advance of the date of the foreclosure sale auction of residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less; or

(B) Thirty days in advance of the date of the foreclosure sale auction of any real property other than residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less;

(3) Mails a copy of the notice of commencement of foreclosure in the manner required in section 401 with the information required in subsection (e) of this section to every subordinate interest holder whose interest may be extinguished by the foreclosure sale and whose interest was created at least 60 days before the date the notice of commencement of foreclosure is sent at least:

(A) Forty-five days in advance of the date of the foreclosure sale auction of residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less; or

(B) Thirty days in advance of the date of the foreclosure sale auction of any real property other than residential real property which had an assessed value at the time of recording the residential lien instrument of \$1 million dollars or less; and

(4) For residential lien instruments encumbering residential real property which had an assessed value at the time of recording the residential lien instrument of one million dollars or less, serves a copy of the notice of commencement of foreclosure at least 40 days in advance of the date of the foreclosure sale auction upon the owner, if the owner can be found at the residential real property encumbered by the residential lien instrument. If the owner cannot be found at the residential real property encumbered by the residential lien instrument, it shall be sufficient service of the notice of commencement of foreclosure to deliver the notice to a person of proper age who is related to the owner and who resides at the residential real property encumbered by the residential lien instrument. In the absence of a person of proper age who is related to the owner and who resides at the residential real property encumbered by the

residential lien instrument, it shall be sufficient service of the notice of commencement of foreclosure to post the notice in some conspicuous place upon the residential real property. For purposes of service, it shall be deemed sufficient for the trustee or assignee for foreclosure to have a private process server make 2 attempts on different days of the week and at different reasonable times of the day to locate the owner at the residential real property, and if the owner is not found, to serve or post the notice of commencement as provided in this subsection.

(d) Each notice of commencement of foreclosure sent to a borrower or owner shall include copies of the following:

(1) The note or other obligation or lost note affidavit, any guaranty, and the lien instrument;

(2) An affidavit by the noteholder, obligee, beneficiary, mortgagee, or secured party, based on actual knowledge and reasonable commercial efforts to determine facts, stating:

(A) The amount owed on the note or other obligation with a breakdown of principal, interest, default interest, late fees, yield maintenance or prepayment premiums or fees, enforcement costs, amounts advanced to protect the security in the real property and the amount of interest accruing daily on the note;

(B) The amount necessary to reinstate, the maturity date and other terms of the note for each residential lien instrument or, for a lien instrument that is not a residential lien instrument, as provided in the lien instrument;

(C) The noteholder's or obligee's enforcement costs with an itemization of the costs;

(D) For each loan, whether the loan is a "home loan" as defined in section 101(12);

(E) Whether the owner is covered by the Soldiers' and Sailors' Civil Relief Act of 1940, approved October 17, 1940 (54 Stat. 1178; 50 U.S.C. §§ 501-48, 60-90); and

(F) The basis under which the lien instrument qualifies for power of sale foreclosure;

(3) A title search of the real property, in the form of an American Land Title Association commitment for title insurance, made not more than 60 days before the date the notice is sent; and

(4) For a residential lien instrument or a lien instrument securing a home loan, notice of the owners' and borrowers' rights, including the amount necessary to reinstate the maturity date and other terms of the note or other obligation, if applicable, payment instructions for reinstatement, the deadline for reinstatement, available sources of help for owners of residential real property, definitions of "predatory lending" and "home loan" in this act, and the entitlement to judicial foreclosure if a loan is a home loan which violates section 601 or is otherwise not qualified for power of sale foreclosure.

(e) Each notice of commencement of foreclosure sent to a subordinate interest holder

shall include either a statement that a complete copy of the enclosures sent to the owner with the notice of commencement of foreclosure sale may be obtained from the person identified in the notice of commencement of foreclosure sale as the person maintaining the copies required by section 513 or a complete copy of the enclosures sent to the owner with the notice of commencement of foreclosure.

(f) The failure to send a borrower or subordinate interest holder the notice of commencement of foreclosure and other documents required under this section shall not invalidate or affect the notices and other documents sent to the owner, other borrowers, and other subordinate interest holders. The trustee or assignee for foreclosure shall not be liable for errors and omissions in the title report required in subsection (d)(3) of this section of which the trustee or assignee for foreclosure has no actual knowledge; provided, however, the absence of actual knowledge of such errors or omissions shall not relieve or waive any duty of the trustee or assignee for foreclosure or requirement of this act.

(g) No notice of commencement of foreclosure is required to be given to a person:

(1) Who joined in the execution of the lien instrument being foreclosed for the sole purpose of releasing rights of dower or other rights of inheritance; and

(2) Who has no personal liability for payment or performance of the note or other obligation or lien instrument.

Sec. 503. Minimum time period before foreclosure sale auction on residential lien instrument securing a home loan.

No foreclosure sale auction may be commenced under a residential lien instrument without an information form attached to the recorded residential lien instrument or securing a home loan until after the expiration of the time period for an owner or borrower to request judicial foreclosure. Any residential lien instrument with an information form attached to the recorded residential lien instrument which does not secure a home loan shall not be subject to delay for any time period for an owner or borrower to request judicial foreclosure.

Sec. 504. Noteowner cannot produce original note; form of lost note affidavit and indemnification to borrower, owner and mayor.

(a) If the original note or other obligation secured by the lien instrument has been lost or for any reason cannot be produced for the trustee or assignee for foreclosure and the noteowner or obligee submits to the trustee or assignee for foreclosure an affidavit to that effect, the trustee or assignee for foreclosure may proceed with the foreclosure sale if the noteowner or obligee has given written notice to the borrower and owner that:

(1) The note or other obligation is lost; and

(2) A request for the foreclosure sale will be made of the trustee or assignee for foreclosure upon expiration of 14 days from the date of sending of the written notice.

(b) The notice given under subsection (a) of this section shall include:

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- (1) The name and mailing address of the noteowner;
- (2) The name and mailing address of the trustee or assignee for foreclosure; and
- (3) A lost note affidavit and indemnification containing the following:

(A) The lost note affidavit shall identify and describe the note and lien instrument by stating the date, the parties, the recording information for the lien instrument, the assessment and taxation lot, recorded lot and square numbers for the real property, and a legal description of the real property if it is not comprised solely of recorded lots; and

(B) The lost note affidavit shall be executed and acknowledged by the noteowner of the lost, misplaced, or destroyed note and shall state that:

(i) The noteowner is the owner of the note and neither the note nor any interest therein has been transferred, assigned, or negotiated to any other person;

(ii) The noteowner has been unable to locate the original note despite a diligent search, and the original note has been lost, misplaced, or destroyed; and

(iii) The noteowner indemnifies all persons liable for repayment of the note or other obligation, the trustee or assignee for foreclosure, and the Mayor of and from any loss, damage, or expense caused by the attempted wrongful enforcement of the original note or lien instrument.

(c) The notice under subsection (a) of this section shall advise the borrower and owner that if the borrower or owner believes he or she may be subject to a claim by a person other than the noteowner or obligee to enforce the missing note or other obligation, the borrower or owner may petition an appropriate court in the District of Columbia for an order requiring the noteowner or obligee to provide adequate protection against any such claim. If deemed appropriate by the court, the court may condition the foreclosure sale on a finding that the persons required to pay the missing note or other obligation are adequately protected against loss or damage that might occur by reason of a claim by another person to enforce the missing note or other obligation. Adequate protection may be provided by any reasonable means, including a surety bond from a surety approved by the court.

(d) The fact that the original note or other obligation is lost or cannot be produced shall not affect the authority of the trustee or assignee for foreclosure to conduct the foreclosure sale or the validity of the foreclosure sale.

Sec. 505. Noteowner's remedies on the note and the lien instrument; credit on note or other obligation for foreclosed real property; limitation on time to seek deficiency judgment.

(a) When a note or other obligation secured by a lien instrument becomes due and payable, the noteowner or obligee may either:

(1) Obtain a judgment against any person who is personally liable on the note or other obligation and, to the extent that the judgment is not satisfied, foreclose the lien instrument on the real property for the balance; or

(2) Foreclose the lien instrument and, to the extent that the proceeds of the foreclosure sale do not satisfy the note or other obligation, obtain a judgment for the deficiency against any person who is personally liable on the note or other obligation, in accordance with subsection (b) of this section.

(b) If the foreclosure sale proceeds under subsection (a) of this section are less than the unpaid balance of the note or other obligation secured by the lien instrument, an action may be brought to recover a deficiency judgment against any person who is personally liable on the note or other obligation. Subject to reduction under subsection (c) of this section, the deficiency judgment amount shall be for the amount by which the foreclosure sale proceeds applied to the repayment of the note or other obligation are less than the unpaid balance of the note or other obligation.

(c) Any person against whom a deficiency judgment is sought may request in the proceeding in which the action for a deficiency is pending or in a separate proceeding a determination of the market value of the real property as of the date of the foreclosure sale auction. If it is determined that the market value of the real property is greater than the foreclosure sale price, the person against whom recovery of the deficiency is sought shall be given an offset against the deficiency in the amount by which the market value of the real property, less the amount of any liens on the real property that are senior in priority and cannot be extinguished by the foreclosure sale, exceeds the foreclosure sale price.

(d) If the noteowner or obligee obtains a judgment against any person who is personally liable on the note or other obligation and, to the extent that the judgment is not satisfied, forecloses the lien instrument on the real property for the balance, the person who owes the judgment debt shall be entitled to a credit against the judgment debt and lien from the foreclosure sale in an amount equal to the greater of:

(1) The foreclosure sale proceeds actually applied to the repayment of the judgment debt and lien; or

(2) The amount by which the market value of the real property encumbered by the lien instrument on the date of the foreclosure sale auction, less the amount of any liens on the real property that are senior in priority and cannot be extinguished by the foreclosure sale, exceeds the foreclosure sale price.

(e) Under subsection (d) of this section, the foreclosure sale proceeds, as determined by the auditor's report, shall reduce the judgment amount and judgment lien and the holder of the judgment shall amend the judgment of record within 60 days of recordation of the auditor's report. The person liable for the judgment shall be entitled to seek a further reduction in the judgment amount and lien based on the market value of and senior liens encumbering the foreclosed real property on the date of the foreclosure sale auction in the same manner as provided in subsection (c) of this section.

(f) A noteowner or obligee must commence an action for a deficiency judgment against any liable person within 2 years after the foreclosure sale auction of all real property encumbered

by a lien instrument, subject to extension for bankruptcies or other good cause shown, or the balance of the note or other obligation secured by the foreclosed lien instrument shall be deemed waived.

(g) In the enforcement of the note or other obligation secured by a lien instrument, there shall be no “one action” rule, no “election of remedies” requirement, and no limitation against a deficiency on a purchase money note and purchase money lien instrument, except as provided in this section.

Sec. 506. No waiver of protection laws.

The noteowner, obligee, trustee, assignee for foreclosure, beneficiary, mortgagee, and secured party shall not seek from the borrower, owner, subordinate interest holder, or any person personally liable for the note or other obligation secured by a lien instrument, a waiver from compliance with: the Federal Tax Lien Act of 1996, approved November 2, 1996 (80 Stat. 1125; 26 U.S.C. § 632)]; Soldiers’ and Sailors’ Civil Relief Act of 1940, approved October 17, 1940 (54 Stat. 1178; 50 U.S.C. § 501 *et seq.*); Fair Debt Collections Practices Act, approved September 20, 1997 (91 Stat. 874; 15 U.S.C. § 1692 *et seq.*); Equal Credit Opportunity Act, approved October 28, 1974 (88 Stat. 1521; 15 U.S.C. § 1691); Consumer Credit Protection Act, approved May 29, 1968 (82 Stat. 146; 15 U.S.C. § 673)]; and usury laws. The foregoing prohibition shall not prohibit or limit the right of a borrower, owner, guarantor, subordinate interest holder, or debtor from confirming the actual compliance with or non-applicability of any of the protection laws referenced in the preceding sentence.

Sec. 507. Omitted parties; no right to object for persons who were properly sent notice.

(a) Except for the subordinate interest holder who received actual notice of the foreclosure sale at least 15 days prior to the foreclosure sale auction or whose subordinate interest was created less than 60 days prior to the notice of commencement of foreclosure sale being recorded among the land records, the rights of any borrower who is not the owner or subordinate interest holder in the real property who is not sent the notice of commencement of foreclosure as required in section 502 shall not be adversely affected by a foreclosure sale pursuant to the notice of commencement of foreclosure. The subordinate interest holder who received actual notice of the foreclosure sale at least 15 days prior to the foreclosure sale auction or whose subordinate interest was created less than 60 days prior to the notice of commencement of foreclosure sale being recorded among the land records shall not be considered an omitted party and shall not have any reinstatement or redemption rights with respect to the foreclosure sale pursuant to the notice of commencement of foreclosure sale. The failure to send the notice of commencement of foreclosure as required in section 502 to the owner of the real property, except for an owner described in section 502(g), shall cause the foreclosure sale to be void.

(b) Except for the subordinate interest holder who received actual notice of the

foreclosure sale at least 15 days prior to the foreclosure sale auction or whose subordinate interest was created less than 60 days prior to the notice of commencement of foreclosure sale being recorded among the land records, the borrower or subordinate interest holders who were not sent the notice of commencement of foreclosure shall have the same reinstatement and redemption rights as if the foreclosure sale had not taken place, provided, however, the reinstatement and redemption rights of a borrower who is not the owner of the real property encumbered by the lien instrument at the time of the foreclosure sale auction and who has no personal liability on the note or other obligation by agreement or by express waiver or forgiveness by the noteholder or obligee, shall be terminated at the foreclosure sale auction of a completed foreclosure sale.

(c) No persons who were properly sent the notice of commencement of foreclosure shall have any additional right to object to the foreclosure sale on account of the persons who were not properly sent the notice of commencement of foreclosure.

Sec. 508. Appointment of a receiver; effect on existing leases; priorities between competing receivers.

(a) A beneficiary, trustee, mortgagee, or assignee for foreclosure of a lien instrument is entitled to the appointment of a receiver by the Superior Court to take possession of the real property if:

- (1) The owner or borrower is in default under the lien instrument;
- (2) The value of the real property is inadequate to satisfy the note or other obligation secured by the lien instrument; and
- (3) The owner is committing waste as defined in section 509.

(b) A beneficiary, trustee, mortgagee, or assignee for foreclosure of a lien instrument is entitled to the appointment of a receiver by the Superior Court to take possession of the real property if:

- (1) The owner is in default under the lien instrument; and
- (2) The lien instrument or an ancillary lien instrument contains either a mortgage on the rents or a provision authorizing appointment of a receiver to take possession and collect rents upon the default of the owner.

(c) A receiver appointed under this section has the authority to preserve the real property, to collect rents, to pay real estate taxes and senior liens and lien instruments, to enter into, enforce, and terminate leases for the purpose of generating rental income, and to carry out such other functions as may be authorized by the Superior Court to enforce the receivership. A receiver is entitled to collect rent accruing after the date of appointment and, if the owner has also mortgaged the rents, any unpaid rent that accrued prior to the appointment. The rents from the real property, less amounts paid for real estate taxes, senior liens and lien instruments, and other reasonable expenses incurred in the management, maintenance, and repair of the real property, must be credited on the note or other obligation secured by the lien instrument.

(d) A receiver appointed under this section may collect imputed rent or a use or occupancy charge from an owner who is in actual possession of the real property only if:

(1) The lien instrument or ancillary lien instrument specifically authorizes such collection; and

(2) The specific provision of the note, other obligation, or lien instrument bars personal liability of the owner on the note, other obligation or lien instrument.

(e) The appointment of a receiver confers no authority on the receiver to disaffirm a lease in existence at the time of appointment, except:

(1) A receiver may disaffirm any lease or related agreement between the owner and tenant that contravenes a provision of a prior recorded lien instrument; and

(2) A receiver may disaffirm any lease or related agreement between the owner and a tenant, made while the owner is in default under the lien instrument, that was not commercially reasonable when it was consummated.

(f) Where more than one beneficiary, trustee, mortgagee, or assignee for foreclosure qualifies for the appointment of a receiver under this section, a receivership request by a senior beneficiary, trustee, mortgagee, or assignee for foreclosure has priority over a receivership request by a subordinate beneficiary, trustee, mortgagee, or assignee for foreclosure unless:

(1) Neither the senior lien instrument nor any senior ancillary lien instrument contains either a mortgage on the rents or an authorization for the appointment of a receiver upon owner default; and

(2) The subordinate lien instrument or a subordinate ancillary lien instrument contains either a mortgage on the rents or authorization for the appointment of a receiver upon owner default.

(g) The priority for the senior lien instrument under subsection (f) of this section applies even if the Superior Court has previously appointed a receiver under a subordinate lien instrument.

(h) If a subordinate beneficiary, trustee, mortgagee, or assignee for foreclosure obtains the appointment of a receiver, that receiver has the right, until a receiver is appointed under a senior lien instrument, to collect rents from the encumbered real property and, after first using the rents to pay real estate taxes and other reasonable expenses associated with the maintenance and repair of the real property, to apply the balance to the subordinate lien instrument obligation.

Sec. 509. Waste.

(a) For purposes of this section, the term “waste” means the owner or a non-owner described in subsection (e) of this section, without the beneficiary’s, trustee’s, mortgagee’s, or assignee’s for foreclosure consent:

(1) Physically changes the real property, whether negligently or intentionally, in a manner that reduces its value;

(2) Fails to maintain and repair the real property in a reasonable manner, except for repair of casualty damage or acts of unaffiliated persons not the fault of the owner;

(3) Fails to pay delinquent property taxes or governmental assessments secured by a lien having priority over the lien instrument;

(4) Materially fails to comply with covenants in the lien instrument respecting the physical care, maintenance, construction, demolition, or insurance against casualty of the real property or improvements on it; or

(5) Retains possession of rents to which the beneficiary has the right of possession under section 234.

(b) The following remedies for waste by an owner shall be available to a beneficiary, trustee, mortgagee, or assignee for foreclosure, as necessary to give complete redress:

(1) Foreclosure or the exercise of other remedies available under the lien instrument for default on the secured note or other obligation, if the waste has impaired the beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure security;

(2) An injunction prohibiting future waste or requiring correction of waste already committed, but only to the extent that the waste has impaired or threatens to impair the beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure security; and

(3) Recovery of damages, limited by the amount of waste and limited to the extent by which the waste has impaired the beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure security.

(c) If the real property lien relationship has ended at the time the beneficiary, trustee, mortgagee, or assignee for foreclosure claims waste, an impairment of security shall exist if the value of the real property is less than the sum of the secured note or other obligation and the obligations secured by any liens senior to the lien instrument.

(d) If the real property lien exists at the time the beneficiary, trustee, mortgagee, or assignee for foreclosure claims waste, an impairment of security shall exist if the ratio of the lien instrument obligation to the real property's value is above its originally underwritten level. In such cases, the beneficiary, trustee, mortgagee, or assignee for foreclosure may restore the ratio of the lien instrument obligation to the real property's value to its originally underwritten level by obtaining an order compelling correction of the waste or by recovery of damages, limited by the amount of the waste.

(e) Waste shall be deemed to occur when a person other than the owner ("non-owner") physically changes the real property, whether negligently or intentionally, in a manner that reduces its value. The non-owner may be held liable for damages and may be subjected to an injunction prohibiting future waste or requiring correction of waste already committed. If the non-owner commits the waste with the owner's consent, the non-owner is liable for damages only if the non-owner had actual knowledge of the existence of the lien instrument.

(f) Persons who acquire possessory estates, other than leaseholds, in the real property subject to a lien instrument are liable for waste on the same basis as the owner.

Sec. 510. Beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure right to

funds paid under casualty insurance or taking in eminent domain.

(a) Unless the lien instrument provides otherwise, a beneficiary, trustee, mortgagee, or assignee for foreclosure has the right to the following funds paid on account of loss or damage to the real property encumbered by the lien instrument, to the extent that the beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure security has been impaired by the loss or damage and subject to the provisions of subsection (b) of this section:

(1) The proceeds paid by a casualty insurer due to the occurrence of an insured loss to the real property, if the owner promised the beneficiary, trustee, mortgagee, or assignee for foreclosure, in the lien instrument or otherwise, to purchase the insurance; and

(2) An award resulting from a taking of all or part of the real property under the power of eminent domain, or the proceeds of a sale to a governmental body in lieu of such taking.

(b) Unless the lien instrument provides otherwise, if restoration of the loss or damage described in subsection (a) of this section is reasonably feasible within the remaining term of the lien instrument with the funds received by the beneficiary, trustee, mortgagee, or assignee for foreclosure, together with any additional funds made available by the owner, and if after restoration the real property's value will equal or exceed its value at the time the lien instrument was given, the beneficiary, trustee, mortgagee, or assignee for foreclosure shall hold the funds received subject to a duty to apply them, at the owner's request and upon reasonable conditions, toward restoration. The beneficiary, trustee, mortgagee, or assignee for foreclosure shall credit toward the note or other obligation secured by the lien instrument any funds not so applied and shall not deduct any additional charge or fee prohibited in section 216(d).

Sec. 511. Effect of foreclosure on beneficiary's, trustee's, mortgagee's, or assignee's for foreclosure right to insurance and eminent domain proceeds.

Where a beneficiary, trustee, mortgagee, or assignee for foreclosure has a right to foreclose a lien instrument because the secured note or other obligation is fully due and payable and the beneficiary, trustee, mortgagee, or assignee for foreclosure has a right to casualty insurance or eminent domain proceeds under section 510, the beneficiary, trustee, mortgagee, or assignee for foreclosure may either:

(1) Recover from the insurance proceeds or from the eminent domain award, up to the full amount of the secured note or other obligation, and have further recourse against the real property encumbered by the lien instrument or the owner only to the extent that the recovery on the casualty policy or from the eminent domain award is less than the secured note or other obligation; or

(2) Foreclose on the real property encumbered by the lien instrument and, to the extent that doing so does not satisfy the secured note or other obligation, recover the balance from the insurance proceeds or from the eminent domain award only to the extent that the foreclosure proceeds are less than the secured note or other obligation.

Sec. 512. Acquisition of foreclosure title by the owner or other subordinate interest holder.

(a) An owner who purchases the owner's real property at a foreclosure sale of any lien instrument on that real property acquires title to the real property subject to any lien instrument or other interest that was subordinate to the foreclosed lien instrument.

(b) A subordinate interest holder who purchases real property at the foreclosure sale of any senior lien instrument on that real property acquires title free and clear of the interest of the owner and of any interest that was subordinate to the foreclosed lien instrument.

Sec. 513. Availability of documents for inspection in the District of Columbia.

(a) The trustee, assignee for foreclosure, auctioneer, or counsel for the trustee, beneficiary, assignee for foreclosure, or mortgagee shall maintain in one of their offices copies of:

- (1) The notice of commencement of foreclosure and all attachments;
- (2) The documents evidencing or securing the note or other obligation being foreclosed, to the extent not attached to the notice of commencement of foreclosure;
- (3) The most recent title search of the real property, in the form of an American Land Title Association commitment for title insurance;
- (4) If any unrecorded leases are being preserved in accordance with section 222(c), a list of all unrecorded leases of which the trustee or assignee for foreclosure has knowledge and a list of those unrecorded leases the trustee or assignee for foreclosure will preserve in the foreclosure sale; and
- (5) Any recorded documents affecting the trustee's, beneficiary's, assignee's for foreclosure, or mortgagee's lien on title to the real property.

(b) The copies shall be available for inspection by any person and for copying, at the cost of the person requesting the copies, during normal business hours during the period prior to the foreclosure sale auction. Pursuant to section 502(b), the notice of commencement of foreclosure filed among the land records shall state the identity, name, address and telephone number of the person maintaining such copies.

## **TITLE VI. PREDATORY LENDING**

Sec. 601. Prohibited acts and practices.

The following acts and practices are prohibited and shall be deemed "predatory" in the making, brokering, arranging, funding, or servicing of a home loan ("making a home loan") by any mortgage broker, mortgage lender, or other person ("lender") to any owner, borrower or obligor ("home borrower"):

(a) A lender makes a home loan when the home borrower or home borrowers considered collectively, at the time the application for the home loan is approved, will be unable

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to make all the scheduled payments of interest, principal and mortgage insurance premiums, and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, to repay the home loan. For purposes of making this determination:

(1) The lender's determination of the ability of the home borrowers to make all the scheduled payments of interest, principal and mortgage insurance premiums on the home loan, and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, shall include consideration of the current and expected income, current obligations, employment status, and other financial resources of the home borrowers. The home borrowers' equity interest in the residential real property which secures repayment of the home loan shall not be considered in the determination of the home borrowers' ability to make the periodic scheduled payments of interest, principal, mortgage insurance premiums, and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, prior to the scheduled maturity date of the home loan; provided, that the home borrower's equity interest in the residential real property which secures repayment of the home loan may be considered by the lender when determining whether to approve the loan, as part of the evaluation of the borrower's likelihood of default. In the case of a home loan which includes payment terms under which the aggregate amount of the scheduled payments will not fully amortize the outstanding principal balance, the lender's determination of the ability of the home borrowers to make an expected balloon payment at the scheduled maturity date may include consideration of the home borrowers' equity interest in the residential real property and the home borrowers' ability, based on current market conditions, to refinance the home loan without penalty, hardship or material loss of equity.

(2) A lender shall not include or add a home borrower to the home loan who did not own the residential real property securing the home loan prior to the home loan transaction for the purpose of increasing the income and ability to make all the scheduled payments of interest, principal and mortgage insurance premiums, and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, of the home borrowers owning the residential real property unless the included or added home borrower separately confirms in writing to the lender the home borrower's expectation and commitment to make or substantially contribute to the scheduled payments on the home loan and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums.

(3) For the purposes of this subsection home borrowers shall be presumed to have the ability to make all the scheduled payments of interest, principal and mortgage insurance premiums, and all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, prior to the scheduled maturity of the home loan if the home borrowers have sufficient monthly residual income, after payment of the home borrowers' scheduled payments on the home loan, all payments of escrow deposits for or direct payment of real estate taxes and property insurance premiums, all scheduled payments on installment debts that extend for ten or more months, and revolving debts (calculated by the total minimum

monthly payments due on these revolving debts at the time of the home loan application approval). For the purposes of this subsection, the term “sufficient monthly residual income” means the monthly dollar amounts of residual income for various home borrowers, with or without dependents, in accordance with the corresponding categories designated by the U.S. Department of Veterans Affairs in the Tables of Residual Incomes By Region for the South Region, 38 C.F.R. § 36.4337(e)(1) and (2), as amended, at the time of the home loan application approval. If the U.S. Department of Veterans Affairs ceases to publish determinations of monthly dollar amounts of residual income for the District of Columbia, the Mayor may implement residual income substitute guidelines that shall be used in place of the U.S. Department of Veterans Affairs determinations of monthly dollar amounts of residual income. No presumption of inability to make the scheduled payments shall arise solely from the fact that, at the time of the home loan application approval, the home borrower does not have sufficient monthly residual income, as defined in this subsection, to make the scheduled payments.

(4) The current and expected income and current debts of the home borrowers must be verified by the lender in accordance with standard residential mortgage lending industry practices to underwrite a loan secured by a residential lien instrument. For the purposes of this subsection, the lender will be deemed to have followed standard residential mortgage lending industry practices if the lender verified the home borrowers’ current and expected income and current debts in accordance with any of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, U.S. Department of Housing and Urban Development, or U.S. Department of Veterans Affairs verification guidelines and practices.

(b)(1) Except as provided in paragraph (2) of this subsection, making a home loan that finances, directly or indirectly, any single-premium credit life, credit disability, credit property, credit unemployment insurance, or any other life, income or health insurance premiums of the home borrowers. For the purposes of this subsection, the following insurance premiums shall not be considered financed by the lender,

- (A) Hazard insurance premiums,
- (B) Flood insurance premiums,
- (C) Mortgage insurance premiums, and
- (D) Voluntarily paid insurance premiums that are calculated and paid on

a monthly, quarterly, semi-annual or annual basis with the home borrowers’ right to substitute other insurance or cancel the insurance at any time if the voluntarily paid insurance premiums are not paid from the home loan funding.

(2) The making of a home loan that finances, directly or indirectly, any single-premium credit life, credit disability, credit property, credit unemployment insurance, or any other life, income or health insurance premiums of the home borrower shall not be prohibited or considered predatory if the insurance plan or program under which the insurance is issued is approved pursuant to section 10b of The Act for the Regulation of Credit Life Insurance and

Credit Accident and Health Insurance.

(c) In making a home loan that refinances a loan secured by the same residential real property to the same home borrower which was made 18 months or less before the home loan is made, the lender finances, directly or indirectly, any portion of the home loan's origination/discount points and fees or other fees payable to the lender or any third party in excess of the greater of 2% of the new home loan principal amount actually funded or \$400 or such higher amount as the Mayor may establish by regulation, excluding:

(1) Reasonable charges described in subparagraphs (i), (iii), (iv), and (v) of section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, and

(2) Loan discount points for the purpose of reducing, and which in fact result in a good faith reduction of, the interest rate or time price differential applicable to the new home loan reasonably consistent with established industry customs and practices for secondary mortgage market transactions.

(d) The lender recommends or encourages the home borrowers to default on an existing loan or other debt prior to and in connection with the closing or planned closing of a home loan that refinances all or any portion of the existing loan or other debt.

(e) A lender makes a home loan with an annual percentage rate, as defined in section 226.22 of Title 12 of the Code of Federal Regulations, substantially greater than the home borrower otherwise would have qualified for, at that lender or another lender, had the lender based the annual percentage rate upon the home borrowers' credit scores as provided by nationally recognized credit reporting agencies, using the average or median credit score when more than one, and other customarily used underwriting criteria of the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, U.S. Department of Housing and Urban Development, or U.S. Department of Veterans Affairs.

(f) A lender fails to report the home borrowers' favorable payment history and information to a nationally recognized credit reporting agency for a period of more than 6 months.

(g) A lender collects in making a home loan origination/discount points and fees or other finance charges that, considering the home loan transaction as a whole, are unconscionable in total amount.

(h) A lender makes a home loan that includes a provision that increases the home loan's interest rate upon a default. An increase in the home loan's interest rate upon default shall not include interest rate increases in adjustable rate home loans based on a recognized adjustable rate mortgage index and constant margin amount, so long as an event of default or the acceleration of the maturity date of the home loan does not cause or permit the increase in the interest rate.

(i)(1) A lender charges and retains fees paid by the home borrowers in making a home loan which are:

(A) For services that are not actually performed;

(B) For loan discount points for the purpose of reducing, and which in

fact result in materially less than a bona fide reduction of, the interest rate or time price differential applicable to the home loan, or the amount of the interest rate reduction purchased by the loan discount points is not reasonably consistent with established industry customs and practices for secondary mortgage market transactions; or

(C) Otherwise in bad faith.

(2) For purposes of this subsection and subsections (c) and (g) of this section, provided all other terms of the home loan remain the same, a one percent loan discount point is bona fide and not in bad faith if it reduces the interest rate on the home loan by a minimum of 35 basis points or thirty-five one-hundredths of one percent (0.35%) for any home loan commonly referred to as an “adjustable rate mortgage” where the first interest rate adjustment or principal and interest payment amount adjustment is permitted before the fifth anniversary of the date of the home loan note, or if it reduces the interest rate on the home loan by a minimum of 25 basis points or one-quarter of one percent (0.25%) for any fixed rate home loan or a home loan commonly referred to as an “adjustable rate mortgage” where the first interest rate adjustment or principal and interest payment amount adjustment is permitted on or after the fifth anniversary of the date of the home loan note. No presumption that a one percent loan discount point is unconscionable or has been made in bad faith shall arise solely from the fact that the one percent loan discount point does not reduce the interest rate on the home loan by the applicable amount set forth in the previous sentence.

(j) The lender’s failure in making a home loan to send to the home borrowers, within 3 days of obtaining or receiving the home loan application of the home borrowers, a disclosure notice in the form promulgated by the Mayor. The disclosure notice and instructions for completing, executing and sending the disclosure notice shall be prepared and published in the District of Columbia Register by the Mayor. The Mayor may revise the disclosure notice or instructions at any time on not less than 3 months’ advance publication in the D.C. Register. After the publication of a revised disclosure notice or revised instructions, either the existing or revised instructions may be followed and either the existing or revised disclosure notice shall be accepted until the advance publication period expires.

(k) A lender includes in a home loan or collects or attempts to collect any prepayment premium, fee or charge in violation of subsection (b) of section 216 of this act.

(l) A lender makes a home loan which has a stated maturity or option to accelerate the maturity without a home borrower default that is less than 7 years and 3 months after the date of the home loan note where the scheduled monthly payments of principal and interest were not the same as or greater than the final payment due at maturity, unless the home loan contains an extension option described in the next sentence. The extension option in a home loan must provide the home borrower the option, at the original stated maturity date or at acceleration without a default, to extend the maturity of the home loan without fees or costs to a form:

(1) That allows the home borrower to maintain a level of scheduled monthly payments of principal and interest throughout the remaining term of the loan that does not

exceed the product of (i) the average dollar amount of all prior scheduled monthly payments of principal and interest from the date of the home loan note until the first stated maturity or option to accelerate the maturity without a default (excluding the balloon payment), times (ii) the sum of (A) one, plus (B) the product of the number of scheduled monthly payments between the date of the home loan note and the date of commencement of the extension option times 0.0008333; and

(2) Under which the home loan will be completely self-amortized and paid by the new maturity date, which may not be later than 35 years after the initial funding of the home loan.

(m) In making a home loan, a lender shall not impose or include in any document relating to a home loan a provision whereby the home borrowers waive a violation of this section in advance, unless a waiver is allowed under this section or section 602. An advance waiver provision which violates this subsection shall be deemed against public policy and void.

(n) In making a home loan, a lender shall not include in any note, lien instrument, ancillary lien instrument or obligation that evidences or secures a home loan a mandatory arbitration clause that limits the home borrowers' rights under any District of Columbia or federal consumer protection law, or that limits the home borrowers' right to seek relief through the judicial process. A mandatory arbitration clause or advance waiver of the right to seek relief through the judicial process which violates this subsection shall be deemed against public policy and void.

Sec. 602. Violations and remedies.

(a) The making of a home loan in any manner that violates the provisions of section 601 shall be deemed unlawful and an unfair or deceptive act or practice in or affecting commerce in violation of this act, the District of Columbia Consumer Protection Procedures Act and, where applicable, the District of Columbia Mortgage Lenders and Brokers Act of 1996. The Mayor, Corporation Counsel, or any home borrower to a home loan may seek recovery for a lender's violation of section 601. Notwithstanding the foregoing, if the violation of section 601 was caused solely by any of the home borrowers to the home loan, their employers, creditors or other verifying parties providing materially incorrect information to the lender which the lender did not discover the inaccuracy of prior to the home loan funding, then, so long as the lender verified the current and expected income and current debts of the home borrowers in accordance with section 601(a)(4), the lender shall not be liable for the violation of section 601.

(b) In any suit instituted or maintained by a home borrower who alleges that the lender violated section 601, the presiding judge may, in the judge's discretion, award reasonable attorneys' fees and costs to the lender, the reasonable attorneys' fees and costs to be taxed as a part of the court costs and payable by the home borrower, upon a finding by the presiding judge that the home borrower instituting or maintaining the predatory lending claim knew, or should have known, that the claim was frivolous or malicious.

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(c) The Superior Court shall have original jurisdiction over claims and litigation arising under section 601.

(d) Damages or other relief awarded to the home borrowers under this section may include:

(1) Reformation of the home loan in order to correct or remove an unfair term or a term obtained in violation of section 601 as of the date of initial funding of the home loan including a modification of the interest rate, a rebate of origination/discount points and fees, a modification in the scheduled payments, a rebate of all or part of the home loan principal, interest, late fees, costs and fees, and resetting the amount due under the home loan and future scheduled payments based on the reformation of the home loan;

(2) Actual damages;

(3) Injunctive relief;

(4) Reasonable attorneys' fees and costs;

(5) Punitive damages, provided that punitive damages shall not exceed 600% of the damages awarded under subsection (d)(2) of this section if the predatory act was committed within 15 months of the effective date of this act;

(6) Damages pursuant to any other District of Columbia law;

(7) Requiring the lender to contribute an amount equal to 10% of the monetary award to the Foreclosure Prevention Fund maintained by the Mayor; and

(8) Any other appropriate relief.

(e) Reasonable attorneys' fees and costs shall be awarded under this section if:

(1) The home loan is reformed pursuant to subsection (d)(1) of this section;

(2) Actual damages in excess of \$100 are awarded under subsection (d)(2) of this section; or

(3) Injunctive relief is ordered under subsection (d)(3) of this section.

(f) An action for violation of section 601 may be brought at any time while the home loan is outstanding or within a period of eighteen months after the home loan is paid or otherwise resolved, whether by its original terms, by prepayment, by renewal or refinancing, by foreclosure, or by forgiveness.

(g)(1) A lender making a home loan who, when acting in good faith, fails to comply with section 601(a), (b), (c), (e), (f), (g), (i), (j), (k) or (l), shall not be deemed to have violated section 601 if the lender establishes one of the following:

(A) Without regard to who discovered the error, within 120 days of the home loan initial funding and prior to the institution of an action under this section, the home borrowers were notified of the violation, objectively appropriate restitution was made, and whatever adjustments are necessary were made to the home loan, at the choice of the lender, to:

(i) Make the home loan satisfy the requirements of section 601; or

(ii) Make a material change in the terms of the home loan

beneficial to the home borrowers.

(B) The violation was not intentional and resulted from a bona fide error, notwithstanding lender's maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of an action under this section, the home borrowers were notified of the compliance failure, objectively appropriate restitution was made, and whatever adjustments are necessary were made to the home loan either, at the choice of the lender, to:

- (i) Make the home loan satisfy the requirements of section 601; or
- (ii) Make a material change in the terms of the home loan

beneficial to the home borrowers.

(2) If the lender failed to comply with section 601(j), the lender shall not be deemed to have violated section 601 only if, in addition to satisfying subparagraph (A)(i) or (B)(ii) of this subsection, the lender shall have provided the disclosure notice before the home loan closed and the failure to comply with section 601(j) shall not have been shown to be part of a pattern or practice of failing to comply with section 601(j).

(h) For the purposes of subsection (g) of this section, examples of a bona fide error include clerical, calculation, computer malfunction, programming, and printing errors. An error of legal judgment with respect to a lender's obligations under section 601 is not a bona fide error.

(i) No provision of this act shall be applied or interpreted to bar a home borrower from bringing an action in an appropriate court of competent jurisdiction pursuant to any other District of Columbia or Federal law for damages, injunctive relief or any other relief.

(j) No noteowner or home lender shall assert or rely on the defenses of a holder in due course described in D.C. Code § 28:3-305 with respect to limiting liability under this section.

Sec. 603. Foreclosure against home borrowers subjected to violations of section 601.

If a lender violates section 601 with respect to making a home loan for a home borrower, the lender shall be prohibited from foreclosing upon the residential real property securing the home loan except by judicial foreclosure unless a power of sale foreclosure is authorized by the Superior Court pursuant to a judicial finding that notwithstanding the violation of section 601:

- (1) The home loan was not otherwise unfair or deceptive; or
- (2) The home borrower has been or will be compensated for the violation of

section 601 such that the home loan is not unfair or deceptive considering the effect of the compensating adjustments.

Sec. 604. Other prohibitions and remedies.

(a) The person who actually conducts settlement for any home loan, *i.e.*, a settlement or title company agent, settlement attorney, title company, or other person actually conducting settlement, shall not charge and retain fees and costs paid by the home borrowers if the fees and are:

- (1) For services that are not actually performed; or

(2) Otherwise unconscionable.

(b) A home borrower under a home loan may bring an action under subsection (a) of this section against the person who actually conducted settlement for any home loan, *i.e.*, the settlement or title company agent, settlement attorney, title company, or person actually conducting settlement, who is alleged to have violated subsection (a) of this section. Damages or other relief awarded to the home borrowers under this section may include actual damages, punitive damages and reasonable attorneys' fees and costs. In any suit instituted or maintained by a home borrower who alleges that the person who actually conducts settlement for a home loan violated subsection (a) of this section, the presiding judge may, in the judge's discretion, award reasonable attorneys' fees and costs to the person who actually conducts settlement for a home loan, the reasonable attorneys' fees and costs to be taxed as a part of the court costs and payable by the home borrower, upon a finding by the presiding judge that the home borrower instituting or maintaining the claim under subsection (a) of this section knew, or should have known, that the claim was frivolous or malicious.

**TITLE VII. CIRCUMSTANCES WHEN A RESIDENTIAL LIEN INSTRUMENT MAY BE FORECLOSED ONLY BY JUDICIAL FORECLOSURE**

Sec. 701. Request for judicial foreclosure of residential lien instrument.

(a) Within the challenge period for a residential lien instrument, a borrower who is personally liable or an owner of the residential real property may request that the trustee or assignee for foreclosure pursue judicial foreclosure on:

(1) A residential lien instrument recorded after January 1, 2001 which does not have a properly completed information form attached to it within the time period specified in section 205(e);

(2) A home loan that is alleged to have involved a violation of section 601, so long as the borrower or owner satisfies the required conditions during challenge; or

(3) A residential lien instrument that specifies that it must be foreclosed by judicial foreclosure or is limited to judicial foreclosure by this act.

(b) If a borrower who is personally liable or an owner makes a request under subsection (a) of this section, the trustee or assignee for foreclosure shall follow the instructions of the noteowner, beneficiary, mortgagee, or secured party given pursuant to section 705.

Sec. 702. Written demand for judicial foreclosure.

(a) A request for judicial foreclosure under section 701 shall:

(1) Be in writing;

(2) Include a description of any alleged violations of section 601, to the extent of the borrower's or owner's knowledge;

(3) Be received by the trustee and noteowner or beneficiary or be received by the assignee for foreclosure and mortgagee or secured party or be sent to the trustee and noteowner

or beneficiary or be sent to the assignee for foreclosure and mortgagee or secured party in the manner specified in section 401(c) at the notice address specified in the notice of commencement of foreclosure;

(4) Be accompanied by reasonable evidence of satisfying the requirements in section 703(a)(1)(A) or the first installment payment required under section 703(a)(1)(B) plus the first installment payment required under section 703(a)(2) and (a)(3) payable to the person specified in the notice of commencement of foreclosure sale; and

(5) Include the name and address where the summons for an expedited hearing or a judicial foreclosure action can be served by written notice in accordance with section 401(c) and an agreement that service by written notice in accordance with section 401(c) or another means by which service is actually received will be effective service of process on the requesting borrower or owner.

(b) The challenge period for a residential lien instrument shall commence with the sending of a notice of commencement of foreclosure on an eligible residential lien instrument and shall terminate 35 days after the later of:

(1) Service of the notice of commencement of foreclosure on the owner in accordance with section 502(c)(4);

(2) Five business days after notices of commencement of foreclosure are sent to all borrowers who are personally liable and all owners; and

(3) Recordation of the notice of commencement of foreclosure among the land records.

(c) The failure to properly request judicial foreclosure within the challenge period shall not waive any claim of predatory lending under section 601 by a borrower who is personally liable or the owner. The failure to properly request judicial foreclosure within the challenge period terminates the right to request judicial foreclosure under section 701.

**Sec. 703. Required conditions during challenge.**

(a) The following requirements shall constitute and mean the “required conditions during challenge:”

(1) Providing the person designated to receive payment in the notice of commencement of foreclosure sale either:

(A) Reasonable evidence, such as a Certificate of Insurance on the form promulgated by ACORD Corporation, a not-for-profit standards-setting association for the insurance industry, that property insurance on the residential real property is being continually maintained in an amount sufficient to (i) avoid co-insurance, and (ii) comply with the insurance requirements in the residential lien instruments . The noteowner, beneficiary, mortgagee, or secured party shall be named in the property insurance policy as a mortgagee under a standard mortgage clause, receiving at least 30 days’ notice from the insurer of any cancellation or

failure to renew such property insurance policy. This paragraph may be elected only if there are no insurance premiums for which reimbursement is owed to the noteowner or noteowner's agent, or reasonable evidence is provided that property insurance had been continuously maintained by the owner and the property insurance provided by the noteowner, beneficiary, mortgagee, or secured party was in addition to the owner's property insurance, or the noteowner or noteowner's agent is paid at the beginning of each month an amount sufficient to reimburse the noteowner within 12 months for property insurance premiums advanced by the noteowner due to the owner's failure to maintain property insurance; or

(B) Paying by the 5th business day of each month, 1/12 of the annual premiums for property insurance. This subsection paragraph may be elected only if there are no insurance premiums for which reimbursement is owed to the noteowner or noteowner's agent, or reasonable evidence is provided that property insurance had been continuously maintained by the owner and the property insurance provided by the noteowner, beneficiary, mortgagee, or secured party was in addition to the owner's property insurance, or the noteowner or noteowner's agent is paid at the beginning of each month an amount sufficient to reimburse the noteowner within 12 months for property insurance premiums advanced by the noteowner due to the owner's failure to maintain property insurance; plus

(2) Paying by the 5th business day of each month:

(A) One-twelfth of the annual real property taxes and assessments next due;

(B) One-twelfth of any delinquent real property taxes and assessments; and

(C) One-twelfth of the interest and penalties due on any delinquent real property taxes and assessments at the time of the demand for judicial foreclosure; plus

(3) Paying by the 5th business day of each month with respect to the previous month, one-half of one percent of the amount determined by subtracting:

(A) The total amount of all loan origination/discount points and fees charged to the borrower and owner, as stated in the information form, from

(B) The lesser of the maximum principal amount of the note secured by the lien instrument, as stated in the information form, or the maximum principal amount of the note secured by the lien instrument actually funded to or for the account of the borrower and owner.

(b) The borrower or owner shall satisfy the required conditions during challenge of subsection (a) of this section on or before the 5th business day of every month. If more than one borrower or owner demands judicial foreclosure under conditions which require satisfaction of the required conditions during challenge, the satisfaction by any of the borrower and owner shall be satisfaction on behalf of all of them.

(c) Except where a delay is caused by the borrower or owner seeking protection under the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, or circumstances where the noteowner and

trustee or assignee for foreclosure did not cause the delay; if:

- (1) The noteowner and trustee or assignee for foreclosure do not diligently and continuously pursue the foreclosure of the residential lien instrument or the expedited hearing;
- (2) The expedited hearing is not held within 6 months of the trustee's election to seek an expedited hearing, or
- (3) The trustee or assignee for foreclosure elects to seek judicial foreclosure or a court orders that the trustee or assignee for foreclosure seek judicial foreclosure in connection with the expedited hearing, then the borrower or owner may cease making the payment under subsection (a)(3) of this section until the expedited hearing is held or the judicial foreclosure hearing is held.

Sec. 704. Failure to continuously satisfy the required conditions during challenge.

(a) The trustee or assignee for foreclosure may cancel the requesting borrower's and owner's request for judicial foreclosure if there is a failure to satisfy the required conditions during challenge as provided in section 703(a) on or before the 5th business day of each month and:

- (1) The trustee or assignee for foreclosure sends written notice of the failure to the requesting borrowers and owners;
- (2) The trustee does not cancel the request for judicial foreclosure prior to 10 business days after sending the written notice under subsection (a)(1) of this section; and
- (3) The failure to satisfy the required condition during challenge continues during the 10 business day period under subsection (a)(2) of this section.

(b) If there is a proper cancellation of the request for judicial foreclosure by the trustee or assignee for foreclosure under this section, the borrower or owner making the request shall not require judicial foreclosure by virtue of meeting the required conditions during challenge. If there is no other entitlement to or requirement for judicial foreclosure, then the trustee or assignee for foreclosure may immediately pursue a power of sale foreclosure.

(c) If a noteowner alleges that there is a failure to satisfy the required conditions during challenge, the trustee or assignee for foreclosure shall make an independent judgment of whether there is a failure to satisfy the required conditions during challenge.

(d) Nothing in subsection (b) of this section shall be deemed to bar a person with an interest in the residential real property from bringing any claim other than a claim for judicial foreclosure based on meeting the required conditions during challenge.

Sec. 705. Noteowner's, beneficiary's, mortgagee's, and secured party's options in response to request for judicial foreclosure.

Upon receipt of a request for judicial foreclosure and the satisfaction of any required conditions during challenge, the noteowner, beneficiary, mortgagee or secured party shall instruct the trustee or assignee for foreclosure in writing within 10 days to do one of the

following:

(1) Notify all borrowers and owners by written notice in accordance with section 401(c) that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure received the request and, if applicable, the initial required conditions during challenge, and the noteowner, beneficiary, mortgagee, or secured party has accepted the request and has instructed the trustee or assignee for foreclosure to pursue judicial foreclosure;

(2) Notify all borrowers and owners by written notice in accordance with section 401(c) that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure received the request but the required conditions during challenge have not been satisfied. The written notice shall contain a detailed statement of what must be done to satisfy the required conditions during challenge. The borrower or owner requesting the judicial foreclosure shall have 10 business days, from the date the written notice is sent, within which to satisfy the required conditions during challenge. If the borrower or owner requesting the judicial foreclosure satisfies the required conditions during challenge within the ten business day period, the request shall be considered valid and the noteowner, beneficiary, mortgagee, or secured party shall instruct the trustee or assignee to respond to the requesting person under either paragraphs (1) or (3) of this section;

(3) Notify all borrowers and owners by written notice in accordance with section 401(c) that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure received the request and, if applicable, the initial required conditions during challenge, and that the noteowner, beneficiary, mortgagee, or secured party has denied the request and instructed the trustee or assignee for foreclosure to file the necessary pleadings within 5 business days to seek an expedited hearing to determine if the requesting borrower or owner is entitled to judicial foreclosure, The requesting party must continue to satisfy the required conditions during challenge monthly, if applicable;

(4) Notify all borrowers and owners by written notice in accordance with section 401(c) that:

(A) The noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure received the request;

(B) The noteowner, beneficiary, mortgagee, or secured party has instructed the trustee or assignee for foreclosure to deny the request and proceed with a power of sale foreclosure because the required information form was recorded with the residential lien instrument in accordance with section 205; and

(C) The information form and residential lien instrument were provided to the requesting borrower or owner with the notice of commencement of foreclosure; or

(5) Notify all borrowers and owners by written notice in accordance with section 401(c) that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure received the request and, if applicable, the initial required conditions during challenge, and that the noteowner, beneficiary, mortgagee, or secured party has denied

the request and instructed the trustee or assignee for foreclosure to proceed with a power of sale foreclosure because the note and residential deed of trust do not qualify as a home loan and are not required to be foreclosed by judicial foreclosure.

**Sec. 706. Failure of trustee or assignee for foreclosure to pursue expedited hearing.**

If the trustee or assignee for foreclosure notifies the requesting person that he or she will seek an expedited hearing but fails to file or make a good faith effort to file the necessary pleadings and motions with the appropriate court within the earlier of: (1) five business days after receiving written notice from the requesting person that more than ten business days have elapsed since receiving the trustee's or assignee's for foreclosure notice and the requesting person has not been served with any notice of an expedited hearing, or (2) twenty business days after sending the notice to the requesting person of his or her decision to seek an expedited hearing, the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure shall be deemed to have accepted the request for judicial foreclosure and may not thereafter seek an expedited hearing or pursue a power of sale foreclosure without court approval or written consent from all borrowers who are personally liable on the note secured by the residential lien instrument and all owners.

**Sec. 707. Diligent pursuit of expedited hearing.**

Once the trustee or assignee for foreclosure receives instruction under section 705 to seek an expedited hearing, the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure shall diligently and continuously pursue the expedited hearing. If the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure do not diligently and continuously pursue the expedited hearing or decide to abandon the expedited hearing, the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure shall be deemed to have accepted the request for judicial foreclosure and may not thereafter seek an expedited hearing or pursue a power of sale foreclosure without court approval or written consent from all borrowers who are personally liable on the note secured by the residential lien instrument and all owners.

**TITLE VIII. EXPEDITED HEARING**

**Sec. 801. Request for expedited hearing.**

Upon receiving the appropriate pleadings and motion, the court shall schedule a hearing on an expedited basis. The borrowers and owners who properly requested an expedited hearing and maintained any required conditions during challenge until the hearing is completed shall be summoned to and may participate in the expedited hearing on behalf of all the borrowers and owners. The trustee or assignee for foreclosure and the noteowner, beneficiary, mortgagee, and secured party shall be summoned to and may participate in the expedited hearing on behalf of the noteowner.

Sec. 802. Determination at expedited hearing.

(a)(1) Based on the pleadings and evidence taken at the expedited hearing and on such further proceedings as the court may require, the court shall make a determination whether the borrower's or owner's request that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure pursue judicial foreclosure shall be granted by the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure.

(2) In making the determination under paragraph (1) of this subsection, the court must find at least one of the following:

(A) The borrower or owner has adduced sufficient evidence to satisfy the court that a reasonable probability exists that the borrower or owner can prove that a violation of section 601 occurred in the making of the home loan;

(B) The noteowner, beneficiary, mortgagee, or secured party has adduced sufficient evidence to satisfy the court that a reasonable probability exists that the borrower or owner can not prove that a violation of section 601 occurred in the making of the home loan;

(C) The borrower or owner has adduced sufficient evidence to satisfy the court that a reasonable probability exists that the required information form was not provided with the residential lien instrument as required in section 205; or

(D) The noteowner, beneficiary, mortgagee, or secured party has adduced sufficient evidence to satisfy the court that a reasonable probability exists that the required information form was provided with the residential lien instrument as required in section 205.

(b) If the court determines that the request for judicial foreclosure shall be granted, the trustee or assignee for foreclosure may immediately proceed with a judicial foreclosure action in the same case by motion and service of process on all necessary persons. In such event, the required conditions during challenge shall be terminated without waiving any requirements in the note or residential lien instrument. If the court determines that the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure are not required to grant the request for judicial foreclosure, the trustee or assignee for foreclosure may immediately proceed with a power of sale foreclosure.

(c) If any party appeals the determination of the court under subsection (a) of this section, the appellate court shall require a bond of the appealing party sufficient to protect the non-appealing party from reasonably foreseen loss or damage to the non-appealing party caused by the delays of the appeal where the appealing party does not prevail.

**TITLE IX. JUDICIAL FORECLOSURE**

Sec. 901. Commencement of judicial foreclosure.

Judicial foreclosure shall be commenced by the filing of a petition to foreclose the lien instrument. After the filing of the petition, process shall be issued and served on all necessary

persons and the action shall proceed as in any other civil action.

**Sec. 902. Determinations by the court.**

In the judicial foreclosure proceeding, the court shall determine:

- (1) If a debt secured by a residential lien instrument exists;
- (2) The amount of the debt, if any, which the court finds exists under paragraph (1) of this section;
- (3) Whether an uncured default under the note or other obligation or the residential lien instrument securing the note or other obligation has occurred;
- (4) Whether the residential lien instrument securing the note or other obligation failed to have the required information form attached pursuant to section 205;
- (5) If alleged by any borrower or owner, whether the note or other obligation and residential lien instrument evidence and secure a home loan; and
- (6) If alleged by any borrower or owner and the note or other obligation and residential lien instrument evidence and secure a home loan, whether the noteowner, beneficiary, mortgagee, secured party, trustee or assignee for foreclosure violated section 601.

**Sec. 903. No home loan or no violation of section 601.**

(a) If the court determines that the residential lien instrument which is the subject of the judicial foreclosure action does not secure a home loan or that the residential lien instrument does secure a home loan but the noteowner, beneficiary, mortgagee, secured party, trustee, and assignee for foreclosure did not violate section 601, and that the residential line instrument does not require judicial foreclosure and did have an information form attached to the recorded residential lien instrument as required in section 205, the court shall give the trustee or assignee for foreclosure permission to pursue a power of sale foreclosure without repeating the notice of commencement of foreclosure and shall dismiss the judicial foreclosure action unless the noteowner, beneficiary, mortgagee, or secured party requests the court to continue with the judicial foreclosure.

(b) If the court determines that the residential lien instrument which is the subject of the judicial foreclosure action does require judicial foreclosure or did not have an information form attached to the recorded residential lien instrument as required in section 205, the court shall proceed with judicial foreclosure of the residential lien instrument and determine the amount of the principal, interest, fees and costs then due and provide a reasonable amount of time not to exceed 30 days within which the principal, interest, fees and costs may be paid and the loan reinstated by the borrower or owner. If the principal, interest, fees and costs are not paid within the time provided in the order, the court shall order that as much of the residential real property as is necessary to satisfy the amount due shall be sold at a foreclosure sale and the terms of the foreclosure sale. The court may take other appropriate action to assure that the foreclosure sale is completed.

(c) If the court determines that the residential lien instrument which is the subject of the judicial foreclosure action does secure a home loan and that the noteowner, beneficiary, mortgagee, secured party, trustee, or assignee for foreclosure did violate section 601, the court shall order appropriate equitable relief. The relief ordered by the court may include any or all of the remedies specified in sections 602, 603 and 604.

**TITLE X. ADVERTISING OF FORECLOSURE SALE**

Sec. 1001. Eligible publications for advertisement of foreclosure sale.

(a) Before selling real property pursuant to a recorded notice of commencement of foreclosure, the trustee or assignee for foreclosure shall publish a notice of the sale in a newspaper, which newspaper shall:

- (1) Have a bona fide list of paying subscribers;
- (2) Have been published and circulated at least once a week for 24 consecutive weeks without interruption;
- (3) During the period of time set forth in paragraph (2) of this subsection, have been published and circulated for the dissemination of news of a general or legal character;
- (3) Have a general circulation in the District of Columbia;
- (4) Charge foreclosure sale advertisement fees on a similar or the same basis as real estate classified advertising;
- (5) Be printed in the English language; and
- (6) Have a second-class mailing permit issued by the United States Postal

Service.

(b)(1) A newspaper which does not have a second-class mailing permit issued by the United States Postal Service may petition the Superior Court of the District of Columbia for authority to publish notices of foreclosure sales for residential real property. Prior to filing a petition, the newspaper shall publish a notice of its intention to file a petition under this subsection in a newspaper of general circulation in the District of Columbia.

- (2) The court shall grant the petition if the court finds that the newspaper:
  - (B) Has been continually published for at least one year, employs a full-time news staff, reports District of Columbia current events and governmental meetings, has an editorial page, accepts letters to the editor, and is, in general, a news forum for the community in which it is circulated;
  - (C) Has a circulation within the community to which the publication is directed;
  - (D) Maintains permanent records of prior published editions of the newspaper; and
  - (E) Has an audit of circulation certified by an independent auditing firm or a business recognized in the newspaper industry as a circulation auditor.
- (3) If the court grants the petition, the court shall authorize the newspaper to

publish notices of foreclosure sales for residential real property for one year. The authority of the newspaper to publish notices of foreclosure sales for residential real property shall be extended for successive one-year periods if a senior officer or director of the newspaper annually files an affidavit certifying that the newspaper continues to meet the requirements of this subsection.

(c) A newspaper which does not have a second-class mailing permit issued by the United States Postal Service shall not be granted authority to publish notices of foreclosure sales for lien instruments which encumber real property other than residential real property.

**Sec. 1002. Content of foreclosure sale advertisement.**

(a) If the real property subject to a foreclosure sale is residential real property and has an assessed value of \$1 million dollars or less at the time of the foreclosure sale advertisement, the foreclosure sale advertisement shall contain:

- (1) The address of the residential real property being sold in not less than a 12 point font size;
- (2) The assessment and taxation lot and square numbers of the residential real property being sold;
- (3) A general description of the residential real property being sold;
- (4) The date, time and place of the foreclosure sale auction in not less than a 12 point font size;
- (5) The date the notice of commencement of foreclosure was recorded among the land records;
- (6) Any required bidder's deposit amount;
- (7) The name, address, and telephone number of the person a potential bidder may contact for more information, as required in section 513; and
- (8) Such other terms of sale as are reasonable and appropriate under the circumstances.

(b) If the real property subject to the foreclosure sale is residential real property with an assessed value over \$1 million dollars at the time of the foreclosure sale advertisement, or any real property other than residential real property, the foreclosure sale advertisement shall contain:

- (1) The address of the real property being sold in not less than a 12 point font size;
- (2) The assessment and taxation lot and square numbers of the real property being sold;
- (3) A reasonably detailed description of the real property being sold;
- (4) Whether the real property being sold is open for inspection;
- (5) A description of the lien instrument being foreclosed;
- (6) The date, time, and place of the foreclosure sale auction in not less than a 12

point font size;

(7) The date the notice of commencement of foreclosure was recorded among the land records;

(8) Any required bidder's deposit amount;

(9) How long the accepted bidder will have to complete settlement;

(10) The name and address of the trustee or assignee for foreclosure;

(11) The name and address of the licensed auctioneer;

(12) A brief summary of the additional information available for inspection as required by section 513 and the name, address and telephone number of the person to contact for such inspection; and

(13) Such other terms of sale as are reasonable and appropriate under the circumstances.

(c) The content of the foreclosure sale advertisement under subsection (b) of this section shall be commercially reasonable.

Sec. 1003. Required publication of foreclosure sale advertisement.

(a) If the real property subject to the foreclosure sale is residential real property with an assessed value of \$1 million dollars or less:

(1) The foreclosure sale advertisement shall be published at least once a week on the same business day for 3 successive weeks;

(2) The first publication of the foreclosure sale advertisement shall be not less than 15 days prior to the foreclosure sale auction;

(3) The last publication of the foreclosure sale advertisement shall be not more than one week nor less than one business day prior to the foreclosure sale auction.

(b) If a foreclosure sale auction published under subsection (a) of this section is postponed as authorized in section 1105, all foreclosure sale advertisements after the date of postponement shall contain the time, date, and place of the postponed foreclosure sale auction and, if required in section 1105, there shall be at least one publication containing the time, date, and place of the postponed foreclosure sale auction appearing at least once during the postponement and at least one business day prior to the date of the postponed foreclosure sale.

(c) If the real property subject to the foreclosure sale is residential real property with an assessed value over \$1 million dollars at the time of the foreclosure sale advertisement, or any real property other than residential real property:

(1) The foreclosure sale advertisement shall be published at least once a week on the same business day for 4 successive weeks;

(2) The first publication of the foreclosure sale advertisement shall be not less than 22 days prior to the foreclosure sale auction;

(3) The last publication of the foreclosure sale advertisement shall be not more than one week nor less than one business day prior to the foreclosure sale auction; and

(4) Advertising in supplemental newspapers or other publications reasonably appropriate for the real property may be made so long as the advertising is commercially reasonable and the real property encumbered by the lien instrument has an assessed value in excess of \$1 million dollars. There is no frequency requirement for supplemental advertising.

(d) If a foreclosure sale auction subject to subsection (c) of this section is postponed as authorized in section 1105, all foreclosure sale advertisements after the date of postponement shall contain the time, date, and place of the postponed foreclosure sale auction and, if required by section 1105, there shall be at least one publication containing the time, date, and place of the postponed foreclosure sale auction appearing at least once during the postponement and at least one business day prior to the date of the postponed foreclosure sale.

(e) The trustee or assignee for foreclosure may publish the foreclosure advertisement in more than one newspaper or more frequently than required by this section if the real property encumbered by the lien instrument has an assessed value in excess of \$1 million dollars. If the trustee or assignee for foreclosure, under this section, determines in good faith that advertising in more than one newspaper or more frequently than is appropriate or necessary under this section, the trustee or assignee for foreclosure may so advertise and the cost of all such advertising shall be included in the foreclosure sale expenses.

#### **TITLE XI. CONDUCT OF THE FORECLOSURE SALE**

Sec. 1101. Business day; time; place; maximum required deposit; who may conduct.

(a) A foreclosure sale auction shall be conducted on a regular business day which is not a holiday in the District of Columbia. A foreclosure sale auction shall not commence before 10:00 a.m., nor commence after 5:30 p.m.

(b) A foreclosure sale auction may be held at the real property which is the subject of the foreclosure sale, in the auction gallery of a licensed D.C. auctioneer, or at any generally accessible commercial location, including an auditorium or hotel meeting room.

(c) The trustee or assignee for foreclosure may require a cash or cash equivalent bidder's deposit up to the lesser of the amount specified in the lien instrument or the following amounts for the following real property:

(1) Five percent of the accepted sale price for residential real property with an assessed value of \$500,000 or less;

(2) Seven percent of the accepted sale price for residential real property with an assessed value of \$1 million or less but more than \$500,000;

(3) Ten percent of the accepted sale price for residential real property with an assessed value greater than \$1 million dollars; and

(4) Ten percent of the accepted sale price for all real property and associated personal property other than residential real property.

(d) A foreclosure sale auction of real property in the District of Columbia shall be conducted by an auctioneer duly licensed under D.C. Code § 47-2801 *et seq.*

Sec. 1102. Noteowner, beneficiary, mortgagee, or secured party right to bid; trustee or assignee for foreclosure may not bid; waiver of deposit.

Except if expressly limited in the lien instrument or if the trustee or assignee for foreclosure is not independent as required in section 212(b), the noteowner, beneficiary, mortgagee, or secured party may bid at any foreclosure sale auction and may purchase the real property. The trustee or assignee for foreclosure named in the lien instrument being foreclosed may not bid at any foreclosure sale auction pursuant to the lien instrument and may not purchase the real property at the foreclosure sale. Except if expressly limited in the lien instrument, the trustee or assignee for foreclosure may waive the collection of the accepted bidder's deposit if the accepted bidder is the beneficiary under the deed of trust, the mortgagee who assigned to the assignee for foreclosure the mortgage, the secured party who assigned to the assignee for foreclosure of the security agreement, or the obligee under any other lien instrument being foreclosed.

Sec. 1103. Adequacy of foreclosure sale price; noteowner's, beneficiary's, mortgagee's, or secured party's conditional agreements before foreclosure sale auction.

(a)(1) A foreclosure sale price obtained pursuant to a power of sale or judicial foreclosure proceeding that is conducted in compliance with applicable law is valid unless the price is grossly inadequate. If the foreclosure sale price is grossly inadequate, the foreclosure sale shall be voidable, not void, so the subsequent acquisition of the real property by a bona fide purchaser for value and without notice of the fact that the foreclosure sale price was grossly inadequate shall make the sale valid with respect to the bona fide purchaser for value and without notice and all persons who subsequently acquire an interest in the real property from the bona fide purchaser and successors in title. Any person who is not personally liable on the note or other obligation or lien instrument secured thereby may not object to the adequacy of the foreclosure sale price under the lien instrument.

(2) A court may consider the discussion in section 8.3 of the Restatement of the Law Third, Property (Mortgages) in determining whether the price is grossly inadequate.

(b) An accepted bid made by a noteowner, beneficiary, mortgagee, or secured party who contracted or reached an understanding to resell the real property which is the subject of the foreclosure sale to an unaffiliated person who otherwise might bid at the foreclosure sale auction, with or without offering financing to the unaffiliated person, shall not void the foreclosure sale or make it voidable; provided, that:

(1) The terms, conditions, and parties to the agreement or understanding are publicly announced at the commencement of the foreclosure sale auction; and

(2) No borrower or owner shall be held personally liable for any deficiency from such foreclosure sale.

Sec. 1104. Memorandum of foreclosure sale.

(a) The trustee or assignee for foreclosure, the auctioneer, and the accepted bidder at a foreclosure sale auction shall execute and deliver to each other and the attorney for the trustee or assignee for foreclosure a written memorandum of the foreclosure sale immediately after the conclusion of the foreclosure sale auction. The form of the memorandum of foreclosure sale and instructions for completing and executing the memorandum of foreclosure sale shall be prepared and published in the District of Columbia Register by the Mayor. The Mayor may change the memorandum of foreclosure sale or instructions at any time on not less than 3 months' advance publication in the D.C. Register. After the publication of a revised memorandum of foreclosure sale or instructions, either the existing or the revised memorandum of foreclosure sale shall be accepted, and either the existing or the revised instructions may be followed, until the advance publication period expires.

(b) The memorandum of foreclosure sale shall contain:

- (1) The accepted bidder's name and address, type of entity, and social security or Internal Revenue Service tax identification number, if available or provided later if not available;
- (2) The name, address, and telephone number of the contact person for the accepted bidder;
- (3) The trustee's name;
- (4) The auctioneer's name and District of Columbia license number;
- (5) The accepted bid price;
- (6) The amount of the deposit paid by the accepted bidder to the trustee or assignee for foreclosure;
- (7) The date, time, and location of the foreclosure sale auction; and
- (8) Such other information as the auctioneer deems pertinent.

(c) A copy of the foreclosure sale advertisement as it appeared in the newspaper shall be attached to the memorandum. A copy of the signed memorandum of foreclosure sale shall be provided to all signing parties.

Sec. 1105. Postponement or delay of foreclosure sale auction.

(a) After the notice of commencement of foreclosure has been recorded among the land records for any real property:

(1) The trustee or assignee for foreclosure may postpone the scheduled foreclosure sale auction one time without recording a new notice of commencement of foreclosure among the land records; provided, that the time and date to which the foreclosure sale auction is postponed is no more than 14 calendar days after the date of the foreclosure sale auction that was postponed; and

(2) By agreement between the owner of the real property subject to the notice of commencement of foreclosure sale, on one hand, and one of the noteowner, beneficiary, trustee, mortgagee, secured party, or assignee for foreclosure, on the other hand, the scheduled

foreclosure sale auction may be postponed by the trustee or assignee for foreclosure up to 3 times without recording a new notice of commencement of foreclosure among the land records; provided, that the time and date to which the foreclosure sale auction is postponed each time is no more than 14 calendar days after the date of the foreclosure sale auction that was postponed.

(b) If a scheduled foreclosure sale auction is postponed under subsection (a) of this section either:

(1) The postponement must be publicly announced at the time and place for the postponed foreclosure sale auction to all persons attending at the scheduled time and place for the postponed foreclosure sale auction; or

(2) Written notice of the postponement shall be sent to all owners, borrowers and subordinate interest holders entitled to notice pursuant under section 502(c)(2) and (c)(3) at least 7 days before the postponed foreclosure sale auction and at least one advertisement of the rescheduled foreclosure sale auction must be published at least one business day before the re-scheduled foreclosure sale auction. The public announcement or written notice and publication shall state the new time, date and place of the foreclosure sale auction.

(c) If a scheduled foreclosure sale auction is postponed under subsection (a) of this section any number of times which collectively extend the originally scheduled foreclosure auction date stated in the notice of commencement of foreclosure sale by more than 30 days, then a written notice of the postponement shall be sent to all owners, borrowers and subordinate interest holders entitled to notice pursuant under section 502(c)(2) and (c)(3) at least 7 days before the rescheduled foreclosure sale auction and at least one advertisement of the rescheduled foreclosure sale auction shall be published at least one business day before the rescheduled foreclosure sale auction. The notice of postponement and advertisement shall state the new time and date of the foreclosure sale auction and, only in the notice of postponement, shall identify the person bearing the cost of the postponement. The notice of postponement and advertisement shall be sent or published within 7 days after the time and date of the postponed foreclosure sale auction is established, which is more than 30 days after the originally scheduled foreclosure auction date stated in the notice of commencement of foreclosure sale. No subsequent written notice or advertisement of postponement shall be required for any additional postponements under subsections (a) of this section.

(d) The noteowner, trustee, mortgagee, or assignee for foreclosure may delay the time of a scheduled foreclosure sale auction one or more times during the same business day by not more than 7 ½ hours in the aggregate to a later time during the same business day, but not later than 5:30 p.m., provided that an announcement of the time at which the delayed foreclosure sale auction will be held shall be made to all persons attending at the previously scheduled foreclosure sale auction time. If a scheduled foreclosure sale auction is delayed by 7 ½ hours or less in accordance with this section, no written or published notice of the delayed time of the foreclosure sale auction shall be required. A delay of 7 ½ hours or less of a scheduled foreclosure sale auction shall not be considered a postponement.

Sec. 1106. Marshalling; order of foreclosure on multiple parcels.

(a) Except as provided in subsection (b) of this section, if a trustee or assignee for foreclosure holds a foreclosure sale to foreclose a lien instrument encumbering more than one parcel of real property, upon the motion or application of a subordinate interest holder protected by this section, the trustee or assignee for foreclosure must proceed against the parcels in accordance with the following rules:

(1) Parcels on which there are no subordinate interest holders shall be foreclosed upon before parcels on which there are subordinate interest holders; and

(2) As among parcels on which there are subordinate interest holders, those with subordinate interest holders created more recently shall be foreclosed upon before those with subordinate interest holders created at a more remote time.

(b) The order of foreclosure specified in subsection (a) of this section shall not apply when:

(1) Following the order of foreclosure specified in subsection (a) of this section would provide no benefit to a person protected by subsection (a) of this section as reasonably determined by the trustee or assignee for foreclosure;

(2) A person whose interest would be protected by subsection (a) of this section has relinquished that protection by a term of the lien instrument or other conveyance granted to that person, by a term of the lien instrument being foreclosed, or by other written agreement; or

(3) The order of foreclosure specified in subsection (a) of this section would materially prejudice the foreclosing noteowner, beneficiary, mortgagee, or secured party as reasonably determined by the trustee or assignee for foreclosure.

Sec. 1107. Merger doctrine inapplicable to lien instruments.

The doctrine of merger shall not apply to lien instruments or affect the enforceability of a lien instrument obligation.

Sec. 1108. Right to cancel foreclosure sale before completion.

The noteowner, beneficiary, trustee, mortgagee, secured party, or assignee for foreclosure may cancel a foreclosure sale anytime prior to its completion. If a foreclosure sale is cancelled, the foreclosure sale may not be postponed and the foreclosure process, if recommenced, shall be recommenced with a new notice of commencement of foreclosure.

Unless there is an agreement with the owner to the contrary or a non-owning borrower agrees to and actually pays the costs and expenses of the cancelled foreclosure sale, all costs and expenses of the cancelled foreclosure sale shall be borne by the noteowner, beneficiary, mortgagee, or secured party and none of the costs and expenses shall be charged to a owner, borrower, or

subordinate interest holder in the real property.

Sec. 1109. Right to cancel foreclosure sale before issuance of auditor's approval of foreclosure sale procedure.

(a) The noteowner, beneficiary, trustee, mortgagee, secured party, or assignee for foreclosure may cancel a foreclosure sale after the completion of the foreclosure sale auction but before the issuance of the auditor's report approving the foreclosure sale procedure, only based on the following reasons:

(1) A notice of default or notice of acceleration or notice of commencement of foreclosure was unintentionally not sent to a person to whom a notice of default, notice of acceleration, or notice of commencement of foreclosure is required to be sent by this act.

(2) There was an unintentional, material mistake in the conduct of the foreclosure which renders the foreclosure void or voidable in the opinion of counsel for the trustee or assignee for foreclosure;

(3) There was an unintentional failure to comply with the Rental Housing Commission and Sale Act of 1980;

(4) The trustee or assignee for foreclosure is unable to convey title in the condition required in the memorandum of sale due to a defect in the quality of the trustee's or assignee's for foreclosure title in the real property;

(5) The accepted bidder failed to complete the acquisition of the real property without fault of the trustee or assignee for foreclosure;

(6) The auditor disapproved the foreclosure procedure or distribution of proceeds and the reason for the auditor's disapproval cannot be easily corrected without a new foreclosure sale; or

(7) The owner of the real property, accepted bidder at the foreclosure sale and one of the noteowner, beneficiary, mortgagee, secured party, or obligee secured by the foreclosed lien instrument have agreed to cancel the foreclosure sale and reinstate the owner's ownership of the real property, the lien of the foreclosed lien instrument, all subordinate liens extinguished by the foreclosure sale, and all subordinate interests in the real property extinguished by the foreclosure sale as if the foreclosure sale was void *ab initio*.

(b) If there is a cancellation of the foreclosure sale under subsection (a) of this section:

(1) The noteowner, beneficiary, trustee, mortgagee, secured party, or assignee for foreclosure shall send written notice of the cancellation to the auditor and all owners, borrowers, and subordinate interest holders within 2 business days after the decision to cancel;

(2) If the foreclosure process is recommenced, a foreclosure sale shall be recommenced with a new notice of commencement of foreclosure; and

(3) Except as provided otherwise in the agreement described in subsection (a)(7) of this section, all costs and expenses of the cancelled foreclosure sale shall be borne by the noteowner, beneficiary, mortgagee, or secured party and none of the costs and expenses shall be

charged to a owner, borrower, or subordinate interest holder in the real property.

Sec. 1110. Effect of completed foreclosure sale; no statutory redemption.

(a) Except as provided in subsection (b) of this section, a completed foreclosure sale approved by the auditor terminates all ownership rights and interests of:

(1) The person who was the owner of the real property immediately before the foreclosure sale auction;

(2) All borrowers and subordinate interest holders who were parties to the foreclosure; and

(3) Those non-residential tenants whose subordinate leases were extinguished in accordance with section 222(c).

(b) Notwithstanding the provisions of subsection (a) of this section, any individual owner of residential real property who is entitled to receive personal service of the notice of commencement of foreclosure under section 502(c)(4) and who has reached 'retirement age,' as that term is defined in section 216(l) of the Social Security Act, approved July 18, 1952 (64 Stat. 510; 42 U.S.C. § 416(l)), on or before the date the notice of commencement of foreclosure is served or posted under section 502(c)(4), or who is or becomes a mentally incapacitated individual before the date of the foreclosure sale auction, may challenge the foreclosure sale and the successful purchaser's right to possession of the foreclosed real property using a 'plea in title' defense in any action to evict the individual owner or any other action to challenge the foreclosure sale. For the purposes of this subsection, "mentally incapacitated individual" means an adult whose ability to receive and evaluate information effectively is impaired by a mental or physical condition or disability to such an extent that the individual lacks the capacity to manage his or her financial affairs.

(c) There shall be no right of statutory redemption in the District of Columbia.

Sec. 1111. Liability of accepted bidder to complete foreclosure sale acquisition.

(a) If the accepted bidder in a foreclosure sale auction defaults in the acquisition of the real property which was the subject of the foreclosure sale, the noteholder, beneficiary, mortgagee, or secured party may order the trustee or assignee for foreclosure to conduct *de novo* a new foreclosure sale and may:

(1) Hold the new foreclosure sale auction at the risk and cost of the defaulting bidder; or

(2) Retain the accepted bidder's deposit as agreed and liquidated damages for the accepted bidder's default without holding the accepted bidder liable for the risk and cost of the new foreclosure sale auction.

(b) If a new foreclosure sale auction is held at the risk and cost of the defaulting bidder under subsection (a)(1) of this section, the deposit of the defaulting bidder shall be retained by the trustee or assignee for foreclosure and applied against the allowable costs and expenses of

the prior foreclosure sale. The remainder, if any, of the deposit of the defaulting bidder shall be:

- (1) First, credited to the new foreclosure sale price to the extent the new foreclosure sale price is less than the defaulting bidder's foreclosure sale price; and
- (2) Last, the balance, if any, shall be refunded to the defaulting bidder.

(c) If the deposit of the bidder is retained as agreed and liquidated damages for the accepted bidder's default without the defaulting bidder being held liable for the risk and cost of the new foreclosure sale auction under subsection (a)(2) of this section, the accepted bidder's deposit shall be retained by the trustee or assignee for foreclosure and applied against the allowable costs and expenses of the prior foreclosure sale auction and the remainder, if any, shall be credited to the sale proceeds of the new foreclosure sale auction or applied against the note or other obligation secured by the lien instrument.

(d) If the noteowner, beneficiary, mortgagee, secured party, or any affiliate of them is the accepted bidder at a foreclosure sale auction but defaults in the acquisition of the real property which was the subject of the foreclosure sale, the noteowner, beneficiary, mortgagee, secured party, or affiliate shall be liable to the owner and borrower for any damages caused by the default. The liability of the noteowner, beneficiary, mortgagee, secured party, or affiliate under this subsection shall be credited against the note or other obligation secured by the lien instrument that was unsuccessfully foreclosed.

Sec. 1112. Accepted bidder's right to possession of real property after foreclosure sale acquisition.

(a) Except as provided in subsection (b) of this section, a completed foreclosure sale approved by the auditor is conclusive of the successful purchaser's right to possession of foreclosed real property, subject to any senior possessory rights under occupancy leases or senior interests. Except as provided in subsection (b) of this section, no plea in title or other pleading challenging the successful purchaser's right to possession of the foreclosed real property shall permit the former owner to retain possession.

(b) Notwithstanding the provisions of subsection (a) of this section, any individual owner of residential real property who is entitled to receive personal service of the notice of

commencement of foreclosure under section 502(c)(4) and who has reached 'retirement age,' as that term is defined in section 216(l) of the Social Security Act, approved July 18, 1952 (64 Stat. 510; 42 U.S.C. § 416(l)), on or before the date the notice of commencement of foreclosure is served or posted under section 502(c)(4), or who is or becomes a mentally incapacitated individual before the date of the foreclosure sale auction, may challenge the foreclosure sale and the successful purchaser's right to possession of the foreclosed real property using a 'plea in title' defense in any action to evict the individual owner or any other action to challenge the

foreclosure sale. For the purposes of this subsection, "mentally incapacitated individual" means an adult whose ability to receive and evaluate information effectively is impaired by a mental or physical condition or disability to such an extent that the individual lacks the capacity to manage his or her financial affairs.

**TITLE XII. AUDIT OF FORECLOSURE SALE**

Sec. 1201. Required deliveries to auditor.

(a) The following items shall be delivered to the auditor by the trustee, assignee for foreclosure, noteowner, beneficiary, mortgagee, secured party, auctioneer, accepted bidder, subordinate interest holders, and others:

(1) The original note, or a copy of the original note certified by the noteowner with a lost note affidavit and indemnity by the noteowner of the borrower, owner and trustee or assignee for foreclosure in a form approved by the auditor, or, if permitted by the auditor, a copy of the original note certified by the noteowner with an affidavit that the note is secured by a lien on real property or personal property in addition to the real property sold at the foreclosure sale auction and the noteowner needs to retain possession of the original note in order to enforce the other liens;

(2) Any combination of the original, recorded lien instrument and the originals of all amendments to the original, recorded lien instrument, or copies of the original, recorded lien instrument and all amendments evidencing their recordation among the land records as certified by the Recorder of Deeds;

(3) All original, recorded deeds of appointment of substitute trustee, resignations of trustee, or assignments for foreclosure or copies of the original, recorded deeds of appointment of substitute trustee, resignations of trustee, or assignments for foreclosure evidencing their recordation among the land records as certified by the Recorder of Deeds;

(4) A title search of the real property, in the form of an American Land Title Association commitment for title insurance, updated through the date of the foreclosure sale auction;

(5) A copy of the notice of commencement of foreclosure, including all items sent to the owners, borrowers, and subordinate interest holders and their names and addresses used for mailing;

(6) An affidavit of the trustee or assignee for foreclosure that the notice of commencement of foreclosure was mailed to or served on the owners, borrowers, and subordinate interest holders as required in section 502;

(7) An affidavit of the trustee or assignee for foreclosure that the notice of commencement of foreclosure was recorded among the land records;

(8) A copy of the foreclosure sale advertisements;

(9) A certificate of publication from the newspapers which published the foreclosure sale advertisement;

(10) Affidavits of compliance, in the form promulgated by the Mayor from the trustee or assignee for foreclosure, the auctioneer, the accepted bidder, and one of the noteowner, beneficiary, mortgagee, or secured party. Each affidavit of compliance shall state that the person giving the affidavit has no actual knowledge of improper conduct of the foreclosure sale and shall disclose any affiliation among the persons giving the compliance affidavits;

(11) The original memorandum of foreclosure sale required under section 1104 or a copy certified by the auctioneer;

(12) A disclosure of any assignment of the purchase right by the original accepted bidder and whether such assignment is subject to recordation or transfer taxes;

(13) The proposed form of deed of conveyance by the trustee or assignee for foreclosure;

(14) The proposed distribution of gross sales proceeds based on information available to the trustee or assignee for foreclosure or other person submitting a claim to the sales proceeds and payment of all fees and costs, including copies of real estate tax bills, invoices for costs and services, and all necessary information available to the submitting person to verify the proposed distribution of gross sales proceeds;

(15) The amount of deficiency, if any, claimed by the noteowner, beneficiary, mortgagee, or secured party; and

(16) A fee to the Mayor for the auditor's work in the amount required by law or regulation.

(b) The trustee or assignee for foreclosure shall be responsible for the delivery of items from the trustee or assignee for foreclosure, the noteowner, beneficiary, mortgagee, secured party, auctioneer, and accepted bidder. The trustee or assignee for foreclosure shall not be liable for any errors or omissions in any item delivered to the auditor which was provided to the trustee or assignee for foreclosure by a third party where the trustee or assignee for foreclosure has no actual knowledge of the error or omission. The affidavits required in subsection (a)(6) and (7) of this section may be given by the attorney for the trustee or assignee for foreclosure if the auditor agrees to accept the attorney's affidavit in lieu of the trustee's or assignee for foreclosure's affidavit. Subordinate interest holders and others shall be responsible for delivery of items necessary and appropriate to document and substantiate any claim they make upon the foreclosure sale proceeds.

(c) Any assignment of the foreclosure bid shall be submitted to the auditor and reflected in the proposed form of deed of conveyance. Otherwise, the grantee in the deed of the real property shall be the accepted bidder.

(d) The trustee or assignee for foreclosure shall pay to the Mayor a fee for the auditor's work. The fee initially shall be \$300 for each foreclosure sale where the assessed value of the real property was \$1 million dollars or less and \$600 for each foreclosure sale where the assessed value of the real property was over \$1 million dollars. Revised fees may be

promulgated by the Mayor at any time. All fees paid to the Mayor shall be used to pay the administrative costs and other costs of reviewing and approving foreclosure sales.

Sec. 1202. Time deadline for deliveries to auditor.

(a) The items listed in section 1201 which the trustee or assignee for foreclosure is responsible for delivering shall be delivered to the auditor within ninety days of the foreclosure sale auction. The items listed in section 1201 which any subordinate interest holder or other party is responsible for delivering shall be delivered to the auditor within ninety days of the foreclosure sale auction, except that a subordinate interest holder must file a claim within 45 days pursuant to section 1203.

(b) A failure by the trustee or assignee for foreclosure, without reasonable cause, to deliver to the auditor the items listed in section 1201 within 90 days of the foreclosure sale auction shall make the foreclosure sale voidable by the auditor. The auditor shall determine whether to void the foreclosure sale upon the written request of the owner or the auditor's initiating the determination. In determining whether to void the foreclosure sale, the auditor shall request an explanation from the trustee or assignee for foreclosure about the failure to deliver to the auditor the items listed in section 1201(a) within 90 days of the foreclosure sale auction and shall consider any response received. The auditor shall declare the foreclosure sale void and shall not issue a report approving the foreclosure sale if the auditor determines the delay in providing the items listed in section 1201 was materially prejudicial to the owner.

(c) If the auditor declares the foreclosure sale void under subsection (b) of this section, the noteowner or mortgagee shall have the right to a *de novo* foreclosure sale. No costs or expenses of the voided foreclosure sale shall be charged to or paid by a borrower, owner, or subordinate interest holder who did not cause the failure to deliver to the auditor the items listed in section 1201(a) within 90 days of the foreclosure sale auction.

Sec. 1203. Claims by subordinate interest holders.

An interested person claiming a subordinate interest in the real property sold at foreclosure under a lien instrument or claiming a subordinate interest in the proceeds of the foreclosure sale may file with the trustee or assignee for foreclosure a claim to be paid from the surplus proceeds of the sale. The claim must be filed within 45 days of the foreclosure sale auction. Any subordinate interest holder who was sent a notice of commencement of foreclosure in accordance with section 502 shall be deemed to waive any claim not filed with the auditor within 45 days of the foreclosure sale auction. The following documents, to the extent applicable, shall be submitted with the claim:

(1) The original note secured by the subordinate lien instrument, or a copy of the original note certified by the noteowner with a lost note affidavit and indemnity of the borrower, owner and trustee or assignee for foreclosure in a form approved by the auditor, or, if permitted by the auditor, a copy of the original note certified by the noteowner with an affidavit that the

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note is secured by a lien on real property or personal property in addition to the real property sold at the foreclosure sale auction and the noteowner needs to retain possession of the original note in order to enforce the other liens;

(2) Any combination of the original, recorded, subordinate lien instrument and the originals of all amendments to the original, recorded subordinate lien instrument, or copies of the original, recorded, subordinate lien instrument and all amendments evidencing their recordation among the land records as certified by the Recorder of Deeds, or copies of the judgment or other lien showing the signatures of the parties and the recording data for recorded instruments. If appropriate, the copies shall be certified by a court or the Recorder of Deeds.

(3) A letter, statement, or other document to the trustee or assignee for foreclosure, signed by the subordinate noteowner, judgment creditor, or lien creditor, showing the amount necessary to pay the note secured by the subordinate lien instrument or judgment lien or other lien in full on the date of the foreclosure sale auction, including an itemization of the components of the total balance due including principal, interest, default interest, late fees, prepayment fees or premiums, and enforcement costs. The letter, statement, or other document shall be signed under oath and shall be duly acknowledged and shall be deemed prima facie evidence of the accuracy of the matters set forth therein; and

(4) Any other documents which would aid the trustee or assignee for foreclosure in understanding the claim.

**Sec. 1204. Distribution of foreclosure sale proceeds.**

(a) The trustee or assignee for foreclosure shall receive and apply the proceeds of the foreclosure sale and shall account for the proceeds of the foreclosure sale pursuant to sections 1201 through 1206.

(b) The trustee or assignee for foreclosure shall apply the proceeds of the foreclosure sale, to the extent available, in the following order:

(1) To discharge all statutory liens, taxes, levies, and assessments, with costs and interest, including the pro rata portion due for the current year, if the statutory liens, taxes, levies, or assessments have priority over the lien of the lien instrument or are required to be discharged by the terms of the foreclosure sale or are required to be paid when recording the deed of the real property from the trustee or assignee for foreclosure;

(2) To discharge the expenses of executing the foreclosure sale, including: (A) reasonable attorneys' fees as allowed by the Mayor under section 1401; (B) an auctioneer's fee as allowed by the Mayor under section 1402; (C) the auditor's fee as required in section 1201(d); and (D) a commission in the lower amount as is allowed to the trustee or assignee for foreclosure under the lien instrument or such reasonable commission as is allowed by the Mayor under section 309;

(3) To discharge, in the order of their priority, the remaining debts and obligations, if any, secured by the lien instrument, with interest;

(4) To discharge, in the order of their priority, the remaining debts and obligations, if any, secured by any liens of record subordinate to the lien instrument under which foreclosure sale is made, with interest; and

(5) To pay the balance, if any, to the owner of the real property on the date of the foreclosure sale auction; provided, that the trustee or assignee for foreclosure to the residue shall not be bound by any inheritance of, devise of, conveyance of, assignment of, or lien upon the owner's equity, without actual notice of the inheritance, devise, conveyance, assignment, or lien prior to the payment under this section.

(c) The order of priorities stated in subsection (b) of this section shall not be changed by the terms of the lien instrument.

(d) If the accepted bidder at the foreclosure sale auction or assignee of the accepted bidder approved by the auditor is the noteowner, beneficiary, mortgagee, or secured party secured by the lien instrument foreclosed or is a government agency or a government sponsored enterprise which owns the note, including the U.S. Department Housing and Urban Development, the U.S. Federal Housing Administration, the Government National Mortgage Association, the U.S. Department of Veterans Affairs, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Housing Finance Agency of the District, the trustee shall not be required to receive the proceeds of sale from the accepted bidder but shall credit the noteowner, beneficiary, mortgagee, or secured party with as much of the sale proceeds as are available for distribution to the noteowner, beneficiary, mortgagee, or secured party pursuant to subsection (b) of this section.

(e) A trustee or assignee for foreclosure who acts prudently, diligently, and in good faith shall have no personal liability for any distribution of foreclosure sale proceeds made in accordance with this section. For the purposes of this subsection, for a trustee or assignee for foreclosure to be deemed to have acted in "good faith" the trustee or assignee for foreclosure shall have made prudent and diligent efforts, consistent with the higher level of expertise a prudent person is expected to possess, prior to the distribution of foreclosure sale proceeds. The trustee or assignee for foreclosure shall have had no actual knowledge of any fact or circumstance that would reasonably give the trustee or assignee for foreclosure notice that the distribution of sale proceeds should be made in a different manner.

Sec. 1205. Auditor's reports on foreclosure procedures and distributions.

(a) The auditor shall prepare 2 written reports on the foreclosure sale:

(1) Within 15 business days of the auditor's receipt from the trustee or assignee for foreclosure of all items listed in section 1201(a), except the proposed distribution of gross sales proceeds required in section 1201(a)(14), and the amount of the deficiency, if any, required in section 1201(a)(15), the auditor shall issue the auditor's report on foreclosure sale procedures or notify the trustee or assignee for foreclosure under subsection (b) of this section that the auditor is unable to determine if the trustee or assignee for foreclosure followed the foreclosure

sale procedures specified in this act and the Mayor's regulations for this act. In the foreclosure sale procedures report, the auditor shall:

(A) State whether all required deliveries were received from the trustee or assignee for foreclosure in acceptable form, excluding the proposed distribution of gross sales proceeds required in section 1201(a)(14) and the amount of the deficiency, if any, required in section 1201(a)(15);

(B) Acknowledge any proposed assignee of the accepted bidder's contract to purchase the real property and confirm the identity of the grantee in the deed from the trustee or assignee for foreclosure to the grantee;

(C) Confirm that, based on the documents and instruments reviewed by the auditor, either:

(i) The trustee or assignee for foreclosure followed the foreclosure sale procedures specified in this act and the Mayor's regulations for this act, and therefore, the foreclosure sale by the trustee or assignee for foreclosure to the grantee in the deed identified in the auditor's report has been ratified by the auditor; or

(ii) The trustee or assignee for foreclosure did not follow the foreclosure sale procedures specified in this act and the Mayor's regulations for this act, and therefore, the foreclosure sale by the trustee or assignee for foreclosure to the grantee in the deed identified in the auditor's report is not ratified by the auditor and is void; and

(D) Confirm any other information required by the Mayor concerning the foreclosure sale.

(2) Within 45 days of the auditor's receipt of all items listed in section 1201(a), the auditor shall issue the auditor's preliminary report on distribution of foreclosure sale proceeds and deficiency. The auditor's final report on distribution of foreclosure sale proceeds and deficiency shall be issued within the time periods specified in subsection (h) of this section. In the report, the auditor shall:

(A) State whether all required deliveries were received in acceptable form;

(B) Confirm or modify the proposed distribution of the foreclosure sale proceeds; and

(C) Confirm or modify the amount of the proposed deficiency, if any.

(b) If the auditor is unable to determine if the trustee or assignee for foreclosure followed the foreclosure sale procedures specified in this act and the Mayor's regulations for this act, the auditor shall notify the trustee or assignee for foreclosure and request additional information and evidence that procedures and regulations were followed. The trustee or assignee for foreclosure will have a reasonable period of time determined by the auditor, not to exceed 45 days, within which to provide sufficient information and evidence to the auditor of following the procedures and regulations. Not later than 15 days after receiving the additional information and evidence or upon the trustee's or assignee for foreclosure's failure to do so, the

auditor shall issue the auditor's report approving or disapproving the foreclosure sale procedures.

(c) The auditor shall prepare the auditor's report on foreclosure sale procedures and shall distribute the auditor's report on foreclosure sale procedures by mail, using the addresses provided to the auditor pursuant to section 1201, to the trustee or assignee for foreclosure, the attorney for the trustee or assignee for foreclosure, the owner, those persons identified as borrowers in the materials delivered to the auditor, the noteowner, the beneficiary, mortgagee, or secured party, and those persons identified as subordinate interest holders in the materials delivered to the auditor. The auditor's report on foreclosure sale procedures shall be a public document which any person may purchase from the Mayor. Upon the issuance of the auditor's report on foreclosure sale procedures approving the foreclosure sale procedures, the foreclosure sale shall be deemed valid and non-voidable, except for fraud or gross error, and, upon recordation among the land records, shall be conclusive on the trustee's or assignee's for foreclosure right and power to deliver the deed of the real property to the grantee identified in the final auditor's report.

(d) The auditor shall prepare a preliminary report on the distribution of the foreclosure sale proceeds and the amount of the deficiency, if any, and shall distribute the preliminary report by mail, using the addresses provided to the auditor pursuant to section 1201, to the trustee or assignee for foreclosure, the attorney for the trustee or assignee for foreclosure, the owner, those persons identified as borrowers in the materials delivered to the auditor, the noteowner, the beneficiary, mortgagee, or secured party, and those persons identified as subordinate interest holders in the materials delivered to the auditor. The preliminary report on the distribution of the foreclosure sale proceeds and the amount of the deficiency, if any, shall be a public document which any person may purchase from the Mayor.

(e) Any interested person may file objections to the findings or conclusions of the preliminary report of the auditor on the distribution of the foreclosure sale proceeds and the amount of the deficiency, if any. The objections shall be in writing and shall be filed with the Mayor within 10 business days after the auditor's mailing the preliminary report on the distribution of the foreclosure sale proceeds and the amount of the deficiency, if any. The auditor shall promptly consider all written objections received by the Mayor during the 10 business day period. The auditor may, at the auditor's discretion, consider a written objection received by the Mayor after the 10 business day period.

(f) Within 30 days after the receipt of a written objection for an interested person, the auditor shall send written notice of the disposition of the objection to each interested person who filed an objection to the preliminary report within the 10 business day period and those which the auditor accepted after the 10 business day period. The auditor shall modify the preliminary report on the distribution of the foreclosure sale proceeds and the amount of the deficiency, if any, as required or appropriate to disposition of the filed objections and other information received by the auditor. If the revisions to the preliminary report on the distribution of the

foreclosure sale proceeds and the amount of the deficiency, if any, are sufficient to require sending out a revised preliminary report in the auditor's opinion, the auditor shall mail the revised preliminary report in the same manner as the original preliminary report.

(g) An interested person who filed an objection to the preliminary report within the ten business day period who objects to the auditor's disposition of the objection may bring an action in Superior Court to modify the auditor's report. The action shall be brought within ninety days of the issuance of the final auditor's report. If the action challenges the disposition of only a portion of the proceeds from the foreclosure sale, the auditor or court may instruct the trustee or assignee for foreclosure to retain the proceeds in dispute and to proceed with the distribution of the undisputed proceeds, unless the trustee has already distributed the proceeds. The non-prevailing party in any action objecting to an auditor's report shall be ordered by the Superior Court to pay the additional fees and expenses of the auditor in responding to and dealing with the objection and litigation.

(h) If no objections to the preliminary report of the auditor are filed within ten business days after the preliminary report is mailed by the auditor or all objections filed within the ten business day period have been resolved or decided by the auditor, the auditor shall issue a final report on the distribution of the foreclosure sale proceeds by mail to the same persons described in subsection (d) of this section. Promptly after the final report is mailed, the auditor shall legend all original notes or other obligations to evidence the credit for foreclosure sale proceeds and shall return the original notes or other obligations to the persons that submitted them.

(i) The trustee or assignee for foreclosure shall not distribute the foreclosure sale proceeds if the auditor's report disapproves the foreclosure sale procedures. If the trustee has already distributed the foreclosure sale proceeds prior to the recordation of the auditor's final report on the distribution of foreclosure sale proceeds, and the final report requires an adjustment by the trustee with respect to the distribution of foreclosure sale proceeds, then within 30 days from the date of the recordation of the auditor's final report on the distribution of foreclosure sale proceeds, the trustee and the noteowner shall take such actions as may be necessary to adjust the distribution in accordance with the auditor's final report. Within the same 30-day period, the trustee shall confirm in writing to the auditor that the adjustment has been accomplished.

(j) If the trustee or noteowner fails to make the adjustments required by the auditor's final report on the distribution of foreclosure sale proceeds within the time required then, unless the trustee or the noteowner challenge the auditor's final report in an action before a court of competent jurisdiction, the auditor shall issue a supplementary report and record it among the land records. The supplementary report shall note the failure of the trustee or the noteowner to adjust the distribution of foreclosure proceeds as required by the auditor's final report. The effect of the recordation of the supplementary report shall be as follows:

(1) To create, for the borrower or owner under the note or other obligation secured by the foreclosed lien instrument in question, a right of action to recover any surplus

foreclosure proceeds against the trustee and the noteowner, or to serve as a set-off against the amount of any deficiency claimed against the borrower or owner; and

(2) To create, for any person who was a subordinate interest holder in the foreclosed real property, a right of action to recover of any surplus foreclosure proceeds against the trustee and the noteowner.

(k) The recordation of the supplementary report under subsection (j) of this section shall not impair the validity of the foreclosure sale or the title of the person acquiring the foreclosed real property subject to the foreclosure proceedings.

Sec. 1206. Recording of auditor's report on foreclosure sale procedures; presumption of validity of foreclosure sale and limitation of actions; use of auditor's report on the distribution of foreclosure sale proceeds and deficiency for deficiency judgment.

(a) Any person may record the auditor's report on foreclosure sale procedures among the land records.

(b) Upon the issuance of the final auditor's report on the distribution of foreclosure sale proceeds and deficiency, the distribution of the foreclosure sale proceeds and the determination of the amount of the deficiency shall be deemed valid, except for fraud or gross error, subject to reduction of the deficiency under section 505.

(c) An action alleging fraud or gross error in the accounting of a trustee or assignee for foreclosure or the final report of the auditor on the distribution of foreclosure sale proceeds and the amount of the deficiency shall be brought within 3 years after the final report of the auditor is mailed.

(d) The final report of an auditor shall be prima facie evidence of the amount by which the amount due under the note or other obligation secured by the lien instrument exceeded the foreclosure sale proceeds applied to repayment of the amount due under the note or other obligation secured by the lien instrument for the purpose of seeking a deficiency under section 505(b), subject to the reduction of the deficiency under section 505.

### **TITLE XIII. CONVEYANCE OF REAL PROPERTY AND DISBURSEMENT OF FORECLOSURE SALE PROCEEDS**

Sec. 1301. Pre-conditions for conveyance of real property.

(a) The trustee or assignee for foreclosure shall not convey the real property until the earliest of: (1) the final auditor's report on foreclosure sale procedures approving the foreclosure sale procedures is recorded among the land records, or (2) if no notice from the auditor has been received by the trustee or assignee for foreclosure under section 1205(b), 30 business days after the auditor's receipt of all items listed in section 1201(a), except the proposed distribution of

gross sales proceeds required in section 1201(a)(14), and the amount of the deficiency, if any, required in section 1201(a)(15), if the auditor fails to issue an auditor's report on foreclosure sale procedures within the 30 business day period, or (3) if notice from the auditor has been received by the trustee or assignee for foreclosure under section 1205(b), 15 business days after the auditor's receipt of all items requested in or need to comply with the auditor's notice under section 1205(b), if the auditor fails to issue an auditor's report on foreclosure sale procedures within the 15 business day period. The trustee or assignee for foreclosure shall not convey the real property if the auditor's report disapproves the foreclosure sale procedures.

(b) Subject to the obligation of the trustee and noteowner to correct and adjust distributions made before the auditor's final report on the distribution of foreclosure sale proceeds is recorded among the land records, the trustee or assignee for foreclosure shall not distribute the foreclosure sale proceeds until the earliest of the following:

(1) The final auditor's report on foreclosure sale procedures approving the foreclosure sale procedures is recorded among the land records and the auditor has received all items listed in section 1201(a) which the trustee or assignee for foreclosure is obligated to deliver; or

(2) If no notice from the auditor has been received by the trustee or assignee for foreclosure under section 1205(b), 30 business days after the auditor's receipt of all items listed in section 1201(a), if the auditor fails to issue an auditor's report on foreclosure sale procedures within the 30 business day period; or

(3) If notice from the auditor has been received by the trustee or assignee for foreclosure under section 1205(b), 15 business days after the auditor's receipt of all items requested in or need to comply with the auditor's notice under section 1205(b), if the auditor fails to issue an auditor's report on foreclosure sale procedures within the 15 business day period.

(c) The trustee or assignee for foreclosure shall not be liable for any failure by the auditor to issue the reports.

Sec. 1302. Conveyance of real property and distribution of foreclosure sale proceeds.

(a) Within 30 days after the final auditor's report on foreclosure sale procedures is issued or mailed or a longer period approved by the auditor in writing, the trustee or assignee for foreclosure shall execute and deliver the deed of the trustee or assignee for foreclosure to the grantee named in the deed and approved by the auditor in the auditor's report on foreclosure sale procedures. The grantee named in the deed shall pay the sale price for the real property and record the deed among the land records within 30 days after the trustee or assignee for foreclosure executes the deed. The trustee or assignee for foreclosure shall hold all sale proceeds in an escrow account at a regulated financial institution until they are disbursed.

(b) Within 30 days after the final auditor's report on the distribution of foreclosure sale proceeds and the amount of the deficiency is issued or mailed or such longer period approved by

the auditor in writing, the trustee or assignee for foreclosure shall collect and disburse the foreclosure sale proceeds in accordance with the final auditor's report on the distribution of foreclosure sale proceeds and the amount of the deficiency. If there is a failure to collect and distribute the foreclosure sale proceeds, except where the grantee in the approved deed fails to pay the sale price for the real property, the failure shall be deemed a relinquishment by the trustee or assignee for foreclosure of his or her commission and the commission shall be distributed to the noteowner, beneficiary, mortgagee, or secured party.

**Sec. 1303. Duties of purchaser at foreclosure sale.**

(a) A purchaser at a foreclosure sale auction held under any lien instrument and the grantee named in the deed approved in the auditor's report on foreclosure sale procedures shall have no duty to:

- (1) Make inquiry as to the amount necessary to pay in full the note or other obligation secured by the lien instrument being foreclosed; or
- (2) Ensure that the proceeds of the foreclosure sale are distributed by the trustee or assignee for foreclosure in the manner approved in the final auditor's report on distribution of foreclosure sale proceeds and deficiency.

(b) If a noteowner, beneficiary, mortgagee, or secured party is the purchaser at a foreclosure sale, the noteowner, beneficiary, mortgagee, or secured party shall be entitled to credit the amount of the remaining purchase money against his or her indebtedness after the payment of all statutory liens, costs, expenses, senior liens and claims, as approved in the final auditor's report on distribution of foreclosure sale proceeds and the amount of the deficiency and shall be required to pay to the trustee or assignee for foreclosure only the excess of the purchase money over his or her approved indebtedness plus any additional amount which may be necessary to pay the statutory liens, expenses of the foreclosure sale, costs, senior liens and claims, as approved in the final auditor's report on distribution of foreclosure sale proceeds and the amount of the deficiency.

**TITLE XIV. MISCELLANEOUS.**

**Sec. 1401. Determination of auctioneer's fee.**

(a) The Mayor shall promulgate a schedule of commissions and compensation for auctioneers to be used for determining the commissions and compensation charged to the borrower, owner and subordinate interest holder in the enforcement and foreclosure of lien instruments. The schedule of commissions and compensation shall separately provide for residential lien instruments and any other categories or combinations of other lien instruments. The Mayor may revise the schedule of commissions and compensation at any time when a revision is necessary or reasonable, in the Mayor's discretion. The schedule of commissions and compensation may be based on any combination of:

- (1) Fixed or limited dollar amounts;

(2) Percentages of the amount owed on a note;  
(3) Percentages of a purchase price at a foreclosure sale auction;  
(4) Reasonable hourly rates based on time actually spent on the enforcement of the lien instrument, the note, any ancillary lien instrument, the foreclosure sale, any litigation or other proceeding relating to the lien instrument, the note, any ancillary lien instrument, or the foreclosure sale;

(5) Authorizing the commission and compensation provisions in any lien instrument, other than a residential lien instrument, to govern and control the commissions and compensation for the auctioneer for foreclosure under the lien instrument; and

(6) Any other basis the Mayor determines is reasonable.

(b) The schedule of commissions shall set commissions or rates of commission for the following circumstances plus any other circumstances the Mayor decides to address in the schedule of commissions:

(1) An uncontested foreclosure of a residential lien instrument with no attempt by the borrower, owner or any subordinate interest holder to reinstate the note or redeem the real property, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The noteowner or an affiliate of the noteowner purchases the real property at the foreclosure sale auction; or

(B) A third person, unaffiliated with the noteowner, beneficiary, mortgagee and secured party, purchases the real property at the foreclosure sale auction;

(2) Subject to the limitation in subsection (c) of this section, the commencement of foreclosure of a residential lien instrument with no litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(3) The commencement of foreclosure of a residential lien instrument with litigation or court proceedings where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(4) A completed foreclosure of a residential lien instrument without litigation or

court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where there are material reinstatement or redemption negotiations with the borrower, owner or a subordinate interest holder;

(5) A foreclosure of a residential lien instrument with litigation or court proceedings concerning the foreclosure, the owner's or borrower's bankruptcy, the residential real property encumbered by the residential lien instrument, or any other matter related to the foreclosure.

(c) Notwithstanding the provisions of subsection (b) of this section, the auctioneer may not charge commissions and compensation for his or her services in an amount greater than a reasonable hourly rate for the time actually spent by the auctioneer on the enforcement and foreclosure of the residential lien instrument if there has been no litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, and the auctioneer does not complete the foreclosure sale because:

(1) The owner redeems the residential real property;

(2) The owner reinstates the note and residential lien instrument with or without modification; or

(3) The noteowner and owner reinstate the note and lien residential instrument with or without modification.

(d) The compensation charged to the borrower, owner and subordinate interest holder for an auctioneer completing a foreclosure sale under a residential lien instrument shall be the lower of the amounts specified in the residential lien instrument or the amounts provided in the schedule of commissions and compensation for the residential lien instrument and the circumstances that occur.

(e) The Mayor shall provide the schedule of commissions and compensation to any person upon written request through generally available electronic means or regular mail.

(f) No auctioneer may charge the borrower, owner and subordinate interest holder or receive from them more than the amounts provided in the schedule of commissions and compensation promulgated by the Mayor for conducting a foreclosure sale under a lien instrument. This includes any rebates, supplemental payments, gifts, free services or other payments or material benefits received from any person involved in the foreclosure sale with respect to the foreclosure sale. The foregoing does not include additional commission and compensation to the auctioneer voluntarily made by the noteowner, mortgagee, beneficiary, or secured party where the additional payment is not charged directly or indirectly to the borrower, owner or subordinate interest holder.

(g) Subject to the limitations in the schedule of commissions and compensation:

(1) The noteowner or beneficiary or mortgagee or secured party, the owner, and the trustee or assignee for foreclosure may amend the lien instrument at any time to modify the commission and compensation of an auctioneer for a foreclosure sale; and

(2) The noteowner, beneficiary, mortgagee, secured party, borrower, or owner

may enter into a separate agreement with the auctioneer reducing the commission and compensation below the amount specified in the lien instrument.

Sec. 1402. Determination of attorney's fee.

(a) The Mayor shall promulgate a schedule of compensation to be charged to the borrower, owner and subordinate interest holder for attorneys for the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure to be used in the enforcement and foreclosure of lien instruments. The schedule of compensation shall separately provide for residential lien instruments and any other categories or combinations of other lien instruments. The Mayor may revise the schedule of compensation at any time where a revision is necessary or reasonable, in the Mayor's discretion. The schedule of compensation may be based on any combination of:

- (1) Fixed or limited dollar amounts;
- (2) Reasonable hourly rates based on time actually spent on the enforcement of the lien instrument, the note, any ancillary lien instrument, the foreclosure sale, any litigation or other proceeding relating to the lien instrument, the note, any ancillary lien instrument, or the foreclosure sale, plus disbursements for costs;
- (3) Authorizing the commission and compensation provisions in any lien instrument, other than a residential lien instrument, to govern and control the compensation for attorneys under the lien instrument; and
- (6) Any other basis the Mayor determines is reasonable.

(b) The schedule of compensation shall set compensation for the following circumstances plus any other circumstances the Mayor decides to address in the schedule of compensation:

(1) An uncontested foreclosure of a residential lien instrument with no attempt by the borrower, owner or any subordinate interest holder to reinstate the note or redeem the real property, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The noteowner or an affiliate of the noteowner purchases the real property at the foreclosure sale auction; or

(B) A third person, unaffiliated with the noteowner, beneficiary, mortgagee and secured party, purchases the real property at the foreclosure sale auction;

(2) Subject to the limitation in subsection (c) of this section, the commencement of foreclosure of a residential lien instrument with no litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real

property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(3) The commencement of foreclosure of a residential lien instrument with litigation or court proceedings where:

(A) The owner or borrower reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled; or

(B) A subordinate interest holder reinstates the note or redeems the real property, with or without modification of the residential lien instrument, and the foreclosure is cancelled;

(4) A completed foreclosure of a residential lien instrument without litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, where there are material reinstatement or redemption negotiations with the borrower, owner or a subordinate interest holder;

(5) A foreclosure of a residential lien instrument with litigation or court proceedings concerning the foreclosure, the owner's or borrower's bankruptcy, the residential real property encumbered by the residential lien instrument, or any other matter related to the foreclosure.

(c) Notwithstanding the provisions of subsection (b) of this section, the attorney for the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure may not charge compensation for his or her services in an amount greater than a reasonable hourly rate for the time actually spent by the attorney on the enforcement and foreclosure of the residential lien instrument if there has been no litigation or court proceedings, no title problem with the real property, and no ancillary proceeding of any kind, and the attorney does not complete the foreclosure sale because:

(1) The owner redeems the residential real property;

(2) The owner reinstates the note and residential lien instrument with or without modification; or

(3) The noteowner and owner reinstate the note and lien residential instrument with or without modification.

(d) The compensation charged to the borrower, owner and subordinate interest holder for an attorney completing a foreclosure sale under a residential lien instrument shall be the lower of the amounts specified in the residential lien instrument or the amounts provided in the schedule of compensation for the residential lien instrument and the circumstances that occur.

(e) The Mayor shall provide the schedule of compensation to any person upon written request through generally available electronic means or regular mail.

(f) Only for purposes of the amount charged to the borrower, owner and subordinate interest holder under any note or other obligation secured by a lien instrument being foreclosed and the auditor's report on distributions of the foreclosure sale proceeds and deficiency, no

attorney for the noteowner, beneficiary, mortgagee, or secured party and trustee or assignee for foreclosure may charge or receive more than the amounts provided in the schedule of compensation promulgated by the Mayor for conducting a foreclosure sale under a lien instrument. This includes any rebates, supplemental payments, gifts, free services or other payments or material benefits received from any person involved in the enforcement and foreclosure sale with respect to the enforcement and foreclosure sale. The foregoing does not include additional compensation to the attorney voluntarily made by the noteowner, mortgagee, beneficiary, or secured party where the additional payment is not charged directly or indirectly to the borrower, owner or subordinate interest holder.

(g) Subject to the limitations in the schedule of compensation:

(1) The noteowner or beneficiary or mortgagee or secured party, the owner, and the trustee or assignee for foreclosure may amend the lien instrument at any time to modify the compensation of an attorney for a foreclosure sale; and

(2) The noteowner, beneficiary, mortgagee, secured party, borrower, or owner may enter into a separate agreement with the attorney:

(A) Reducing the compensation below the amount specified in the lien instrument; or

(B) Agreeing to separately pay an attorney more than the amount in the schedule of compensation where the additional amount is not charged, directly or indirectly, to the borrower, owner or any subordinate interest holder.

Sec. 1403. No waivers by borrowers or owners.

No borrower or owner shall be required to waive or otherwise limit the protections of this act as part of the making, funding, modification, or enforcement of a loan secured by a lien instrument. Any such waiver or limitation by the owner or borrower shall be void and unenforceable.

Sec. 1404. Standard of conduct.

The standard of conduct for all parties to a loan secured by a lien instrument is good faith and fair dealing. The parties may agree in writing to a higher standard of conduct.

Sec. 1405. Land installment contracts.

Land installment contracts may be enforced only in the same manner and with the same procedures as a lien instrument. No forfeiture under a land installment contract shall be enforceable against the purchaser or person claiming by or through the purchaser.

Sec. 1406. Rulemaking authority.

The Mayor may promulgate rules, in accordance with the District of Columbia Administrative Procedure Act to carry out the purposes and functions of this act within 90 days

of the effectiveness of this act.

**Sec. 1407. FTE authority to implement act.**

Based on the expected revenue to the District to be generated by this act, and to the extent of the actual revenue to the District generated by this act, the Office of Banking and Financial Institutions may hire up to 3 full-time equivalent employees to implement this act.

**Sec. 1408. Reporting to Council.**

The Mayor shall submit to the Council, not later than 180 days after the effective date of this act and every 3 years thereafter, a report on the impact of this act and suggested improvements to the act. The first report shall include an analysis of the costs and effects of the audit procedures established by this act and shall analyze the potential costs and effects both of creating by statute a post-foreclosure redemption period and prohibiting by statute the negative amortization of mortgages.

**Sec. 1409. Standards for approval of subprime loan programs.**

(a) A loan program approval request made under section 101(12)(B)(viii) shall be in writing and shall completely describe the loan program, including loss mitigation, underwriting standards, and product variations to be offered under the program, and shall include any other information required by the Mayor by regulation.

(b) The Mayor shall approve a loan program approval request where the Mayor determines that the loan program benefits consumers and is otherwise in the public interest. The Mayor may approve a loan program with conditions.

(c) The Mayor shall approve or disapprove a loan program approval request not later than 90 days after the submission of a complete request. The Mayor may extend the 90-day period by 30 days if the Mayor requests additional information from the party submitting the request for loan program approval. If the Mayor does not approve or disapprove the request within the time period established by this subsection, the request shall be deemed approved.

(d) The Mayor shall approve or disapprove a loan program approval request which varies specific terms and conditions of a previously approved loan program and which is substantially similar to a previously approved loan program not later than 30 days after the submission of a complete request to approve the program. The Mayor may extend the 30-day period by 15 days if the Mayor requests additional information from the party submitting the request for approval of the program. If the Mayor does not approve or disapprove the request within the time period established by this subsection, the request shall be deemed approved.

(e) The Mayor may revoke a previously granted approval if the Mayor determines, after a public hearing, that the program does not benefit consumers and otherwise serve the public interest.

Sec. 1410. Acceptance of mortgage or deed of trust by the Recorder of Deeds.

The Recorder of Deeds shall not accept for recordation or filing in the land records any mortgage or deed of trust on residential real property unless the mortgage or deed of trust has an information form attached to it, unless there is a written certification by the submitter stating that an information form is not attached; provided, that the recordation of a mortgage or deed of trust on residential real property without an information form attached to it shall not invalidate the recordation of the deed of trust or lien instrument.

Sec. 1411. Conforming amendments.

(a) Section 1804 of the Fiscal Year 1998 Revised Budget Support Act of 1998 is amended as follows:

(1) Paragraph (4) is amended by striking the word "and".

(2) A new paragraph (4A) is added to read as follows:

"(4A) Audit fees and other fees received under the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000; and".

(b) The Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance is amended as follows:

(1) Section 1 is amended by adding a new subsection (c) to read as follows: Mortgage Foreclosure Improvements Act of 2000."

(2) A new section 10b is added to read as follows:

"Sec. 10b. (a) The Commissioner shall review and approve or disapprove an application for approval of an insurance plan or program submitted under section 601(b)(2) of the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000. The Commissioner shall approve the insurance plan or program if the Commissioner determines that the plan or program benefits consumers, is priced similarly to how such an insurance plan or program would be priced in an economically competitive environment, and is otherwise in the public interest. In determining whether to approve an insurance plan or program, the Commissioner shall consider the method of computing the cost of the premium, the method of refund for cancellation or modification, the premium split with the lender, the risks which are covered and the risks which are excluded, eligibility criteria and limitations, and the costs of competitive insurance.

"(b) The Commissioner may approve an insurance plan or program with conditions that ensure that the plan is in, and administered consistently with, the public interest.

"(c) The Commissioner may require that disclosures be made to prospective purchasers under an approved insurance plan or program.

"(d) The Commissioner shall approve or disapprove an application for approval of an insurance plan or program submitted under section 601(b)(2) of the Protections from Predatory Lending and Mortgage Foreclosure Improvements Act of 2000 within 120 days of the submission to the Commissioner of a complete application for approval of the plan or program."

**TITLE XV. FISCAL IMPACT STATEMENT**

Sec. 1501. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

**TITLE XVI. REPEALERS; APPLICABILITY**

Sec. 1601. Repeal of existing law.

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 and sections 1, 2, 3, 11, 13, 14, and 26 of the Compiled Statutes of the District of Columbia are repealed.

Sec. 1602. Applicability.

This act shall apply to all deeds of trust, mortgages, and other real property lending transactions, including the amendment, modification, supplement, or replacement of real property lending transactions; provided, that sections 205, 216, 222, 223, 224, 226, 230, 231, 232, 301, 307(b), 505, 601, 602, 603, 604, 701, 702, 703, 704, 705, 706, 707, 801, 802, 901, 902, and 903 of this act shall not apply to a deed of trust, mortgage, or other real property lending transaction entered into or having occurred prior to the earlier of (i) 150 days after the effective date of this act; or (ii) 60 days after the effective date of the rules promulgated pursuant to section 1406.

**TITLE XVII. EFFECTIVE DATE**

Sec. 1701. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided

in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman

Council of the District of Columbia

Mayor  
District of Columbia