

# FORECLOSURE (NON-JUDICIAL) MEDIATION LAW

DISTRICT OF COLUMBIA OFFICIAL CODE  
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Current through December 13, 2013 and through D.C. Act 20-210  
(except D.C. Acts 20-130, 20-157, and 20-204)

DIVISION VII. PROPERTY  
TITLE 42. REAL PROPERTY  
SUBTITLE I. GENERAL  
CHAPTER 8. MORTGAGES AND DEEDS OF TRUST

D.C. Code § 42-815.02

## § 42-815.02. Foreclosure mediation

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

(1) "Borrower" means a residential mortgage borrower and, if different from the residential mortgage borrower, the person who holds record title.

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

(2A) "Good faith" means each party in the mediation process actively participates in a manner consistent with the requirements of subsection (e)(1) of this section and those indicators defined by regulations, which may include, as applicable to lenders:

(A) A requirement that the lender evaluates the borrower's eligibility for all available loss-mitigation options, and alternatives to foreclosure applicable to the residential mortgage in default, and offers all options for which the borrower is eligible;

(B) An objective standard for assessing the net present value of receiving modified payments compared to the anticipated net recovery following foreclosure; and

(C) A requirement that if the lender rejects a proposed settlement involving loss-mitigation options or alternatives to foreclosure of that lender, the lender shall provide a written explanation for the rejection of the proposal, which shall include an analysis of the proposal.

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

(4) "Loss mitigation analysis" means an analysis, performed by the lender, of a borrower's

financial condition, using information in the borrower's loss mitigation application and any other information available to the lender, to evaluate and recommend options in lieu of foreclosure available to borrower from the lender.

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

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

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

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

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

(9A) "Mediation services" includes the selection and employment of a mediator, foreclosure mediation training, and supplies and materials relating to the foreclosure mediation program.

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

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

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

(B) The following loan information:

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

(ii) All past due payments;

(iii) Penalties; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) A statement that the borrower has to pay a fee as determined by rulemaking payable to the District to participate in mediation; and

(L) A statement that mediation will be held 90 days after the date of the mailing of the form required by subsection (b) of this section.

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

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

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

(d) (1) To participate in mediation, no later than 30 days after the mailing of the notice of default on a residential mortgage and information required by subsection (b) of this section, a borrower shall return the mediation election form and a fee as determined by rulemaking to the Mediation Administrator, and the loss mitigation application to the lender. A borrower shall forfeit the right to mediation if the borrower does not return the mediation election form and the fee as determined by rulemaking to the Mediation Administrator, and the loss mitigation application to the lender, within 30 days after the mailing of the notice of default on a residential mortgage. The requirements in this subsection may be waived by the Mediation Administrator for good cause shown.

(2) For each borrower electing to participate in mediation, the Mediation Administrator shall schedule a mediation session to commence no later than 90 days after the mailing of the notice of default on a residential mortgage.

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

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

(A) Have authority to:

- (i) Address loss mitigation programs that may be available to the borrower;
  - (ii) Renegotiate the terms of the residential mortgage, including a loan modification; and
  - (iii) Negotiate any other options that may be available in lieu of foreclosure; or
- (B) Have access at all times during the mediation to a person with such authority.

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

(i) If the lender, or a representative, fails to attend the mediation, a penalty of \$ 500 shall be imposed;

(ii) If the lender, or a representative, fails to bring to the mediation each document required by this subsection, a penalty of \$ 500 shall be imposed; or

(iii) If the lender, or a representative, fails to participate in the mediation in good faith, a penalty of \$ 500 shall be imposed.

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

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

(3) (A) If the mediator determines that the parties are unable to agree to a loan modification or to any other foreclosure alternatives, no later than 10 days after the final mediation session has concluded at which the parties were unable to reach an agreement, the mediator shall prepare and submit to the Mediation Administrator, on a form prescribed by the Commissioner, a recommendation that the matter be concluded. After review and consideration of the mediator's report and any recommendations therein, no later than 10 days after receiving the mediator's report, the Mediation Administrator shall do one of the following:

(i) Issue a preliminary mediation certificate on a form prescribed by the Commissioner to the lender; provided, that the lender acted in good faith;

(ii) Issue a determination on a form prescribed by the Commissioner that the lender did not act in good faith; or

(iii) Refer the matter to another mediator.

(B) (i) The preliminary medication certificate issued pursuant to subparagraph (A)(i) of this paragraph shall serve as a preliminary decision for a 30-day period, after which time, defined in rulemaking, the lender may request, on a form prescribed by the Commissioner, a final

mediation certificate from the Mediation Administrator; provided, that no appeal is filed within the 30-day period from the date of issuance.

(ii) During this 30-day period, the borrower may file an appeal to the Superior Court of the District of Columbia. If a borrower files a timely appeal, the borrower shall concurrently notify the Mediation Administrator by filing a copy of the appeal with the Mediation Administrator.

(iii) Upon expiration of the 30-day appeal period, with no appeal filed by the borrower, the lender may request a final mediation certificate from the Mediation Administrator during the time frame defined in rulemaking.

(iv) While an appeal is pending, all foreclosure activities shall be stayed until the appeal is resolved.

(v) The preliminary mediation certificate shall not be recorded with the Recorder of Deeds.

(vi) At the conclusion of the appeal, a Superior Court of the District of Columbia order may be used to request or deny a final mediation certificate.

(C) (i) The determination that a lender did not act in good faith issued pursuant to subparagraph (A)(ii) of this paragraph shall not become final until 30 days from its date of issuance.

(ii) During this 30-day period, the lender may file an appeal with the Superior Court of the District of Columbia.

(iii) If no appeal is filed within the 30-day period, the determination shall become final and the notice of default shall become null and void.

(iv) If an appeal is filed, the imposition of any further fines or assessments and collection of any previously assessed fines or assessments shall be stayed until the Superior Court of the District of Columbia issues a final order.

(4) If the parties enter a settlement agreement:

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

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

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

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

(5) Mediation shall be concluded within 180 days of the mailing of the form required by subsection (b) of this section, unless extended for an additional 30 days by the mutual consent of both parties.

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

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

(h) Repealed.

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

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

(h-3) Except as provided in subsections (h-1) and (h-2) of this section, a final recorded mediation certificate shall serve as conclusive evidence that all other provisions of §§ 42-801 through 42-804 and §§ 42-811 through 42-819 and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender or assignees.

(h-4) Nothing in §§ 42-801 through 42-804 and §§ 42-811 through 42-819 shall be construed to limit a borrower's right to assert a claim for fraud or monetary damages against the borrower's lender.

(i) Chapter 3A of title 2 [§ 2-351.01 et seq.], or any successor law, shall not apply to any contract that the Commissioner, or his or her designee, may enter into for foreclosure prevention or remediation services provided pursuant to §§ 42-801 through 42-804 and §§ 42-811 through 42-819 or the Attorneys' General National Mortgage Settlement Agreement. Payment may be made by direct voucher.



(j) The Mayor, pursuant to subchapter I of Chapter 5 of Title [§ 2-501 et seq.], shall issue rules to implement the provisions of this section. The rules shall include provisions:

(1) Ensuring that mediations occur in an orderly and timely manner;

(2) Requiring each party to a mediation to provide such information as the Mediation Administrator determines to be necessary;

(3) Establishing procedures to protect the mediation process from abuse and to ensure that each party to the mediation acts in good faith;

(4) Establishing procedures relating to the appointment of each mediator, the training and qualification requirements for each mediator, and the compensation to be paid to each person serving as a mediator; and

(5) Establishing all applicable fees for the mediation program.

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

**HISTORY:** Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539b, as added Mar. 12, 2011, D.C. Law 18-314, § 2(c), 57 DCR 12404; Sept. 26, 2012, D.C. Law 19-171, §§ 101, 227, 59 DCR 6190; Nov. 5, 2013, D.C. Law 20-40, § 2(b), 60 DCR 12304.

**NOTES:**

EFFECT OF AMENDMENTS. --The 2012 amendment by D.C. Law 19-171 validated a previously made technical correction in the subsection designations; and substituted "Chapter 3A of Title 2" for "§ 2-301.01 et seq." in (i).

The 2013 amendment by D.C. Law 20-40 rewrote this section.

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

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

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

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

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

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

Section 2(b) of D.C. Law 19-173 redesignated the second subsection (e) as (f), redesignated (f) through (i) as (g) through (j), repealed (h), and added (h-1),(h-2),(h-3),(h-4) to read as follows:

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

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

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

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

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

For temporary (225 days) amendment of this section, see § 2(b) of the Saving D.C. Homes From Foreclosure Enhanced Temporary Amendment Act of 2013 (D.C. Law 20-15, September 19, 2013, 60 DCR 9559, 20 DCSTAT 1768).

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

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

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

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

For temporary amendment of (e) through (i), and addition of (h-1) through (h-4), see § 2(b) of the Saving D.C. Homes from Foreclosure Enhanced Congressional Review Emergency Amendment Act of 2012 (D.C. Act 19-493, October 26, 2012, 59 DCR 12722), applicable as of September 13, 2012.

For temporary (90 days) amendment of this section, see § 2(b) of the Saving D.C. Homes From Foreclosure Enhanced Emergency Act of 2013 (D.C. Act 20-71, May 16, 2013, 60 DCR 7240, 20 DCSTAT 1419).

For temporary (90 days) amendment of this section, see § 2(b) of the Saving D.C. Homes From Foreclosure Enhanced Congressional Review Emergency Act of 2013 (D.C. Act 20-117, July 24, 2013, 60 DCR 11112, 20 DCSTAT 1818).

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

EDITOR'S NOTES. --Applicability of D.C. Law 20-40: Section 8 of D.C. Law 20-40 provided that §§ 2 and 3 of the act shall apply as of November 7, 2011.