ENROLLED ORIGINAL

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AN ACT

D.C. ACT 18-635

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 9, 2010

To amend An Act To establish a code of law for the District of Columbia to require mortgage lenders to provide homeowners with a notice of default on residential mortgage and to provide homeowners with the right to engage in mediation prior to foreclosure on residential mortgages.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Saving D.C. Homes from Foreclosure Amendment Act of 2010".

Sec. 2. An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; scattered sections of the District of Columbia Official Code), is amended as follows:

(a) Section 539 (D.C. Official Code § 42-815) is amended as follows: **Amend § 42-815**

(1) Subsection (b) is amended to read as follows:

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

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

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

"(2) Obtain a mediation certificate in accordance with section 539b.".

(2) New subsections (c) and (d) are added as follows:

"(c)(1)(A) A foreclosure sale under a power of sale provision contained in any deed of trust, mortgage, or other security instrument, shall not take place unless the holder of the note

secured by the deed of trust, mortgage, or security instrument, or its agent, gives written notice of the intention to foreclose, by certified mail, postage prepaid, return receipt requested, and by first-class mail, of the sale to the borrower and, if different from the borrower, to the person who holds the title of record, of the real property encumbered by the deed of trust, mortgage, or security instrument at his last known address.

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

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

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

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

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

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

Amend § 42-815.01

(b) Section 539a(a) (D.C. Official Code § 42-815.01(a)) is amended to read as follows:

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

(c) New sections 539b and 539c are added to read as follows:

"Sec. 539b. Foreclosure mediation.

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

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

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

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

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

"(5) "Mediation" means a meeting between lender or trustee and the borrower, with the help of a neutral third-party mediator appointed by the Mediation Administrator, to attempt to reach agreement on a loss mitigation program for the borrower, including the

renegotiation of the terms of a borrower's residential mortgage, loan modification, refinancing, short sale, deed in lieu of foreclosure, and any other options that may be available in lieu of foreclosure.

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

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

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

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

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

"(11) "Notice of default on residential mortgage" means a notice given pursuant to section 539(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 section 539(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 section 539a(a).

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

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

"(b) Notwithstanding the provisions of any other law, after a notice of default of a residential mortgage has been given pursuant to section 539(b)(1), the lender shall engage in

mediation if the borrower elects under subsection (c) of this section. Prior to the foreclosure of any residential mortgage or deed of trust, a lender shall:

"(1) Include with the notice of default on a residential mortgage which is mailed to the borrower pursuant to section 539(b)(1):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(3) If the borrower elects to waive mediation by not paying the $50 fee or by not returning the mediation election form or the loss mitigation application within 30 days after the mailing of the notice of default on a residential mortgage, the Mediation Administrator shall issue a mediation certificate to the lender no earlier than 45 days, but no later than 60 days, after the mailing of the form required by subsection (b) of this section. The power of sale under a

mortgage shall not be exercised until the Mediation Administrator has issued a mediation certificate.

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

"(A) Have authority to:

"(i) Address loss mitigation programs that may be available to the borrower;

"(ii) Renegotiate the terms of the residential mortgage, including a loan modification; and

"(iii) Negotiate any other options that may be available in lieu of foreclosure; or

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

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

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

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

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

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

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

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

receiving the mediator's report, the Mediation Administrator may issue a mediation certificate to the lender or refer the matter to another mediator.

"(4) If the parties enter a settlement agreement:

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

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

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

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

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

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

"(f) 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.

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

"(h) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), or any successor act, shall not apply to any contract that the Mediation Administrator may enter into with mediators for the performance of mediation services.

"(i) The Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 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; and

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

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

"Sec. 539c. Establishment of Foreclosure Mediation Fund.

"(a) There is established as a nonlapsing fund the Foreclosure Mediation Fund ("Fund"), which shall be used solely to pay the costs of the administration of the foreclosure mediation established by section 539b. The Mayor shall deposit in the Fund all fees and penalties generated pursuant to the foreclosure mediation program.

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

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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. Official Code § 1-206.02 (c)(3)).

Sec. 4. 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), 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. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Vincent C. Gray

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVBD
December 9, 2010